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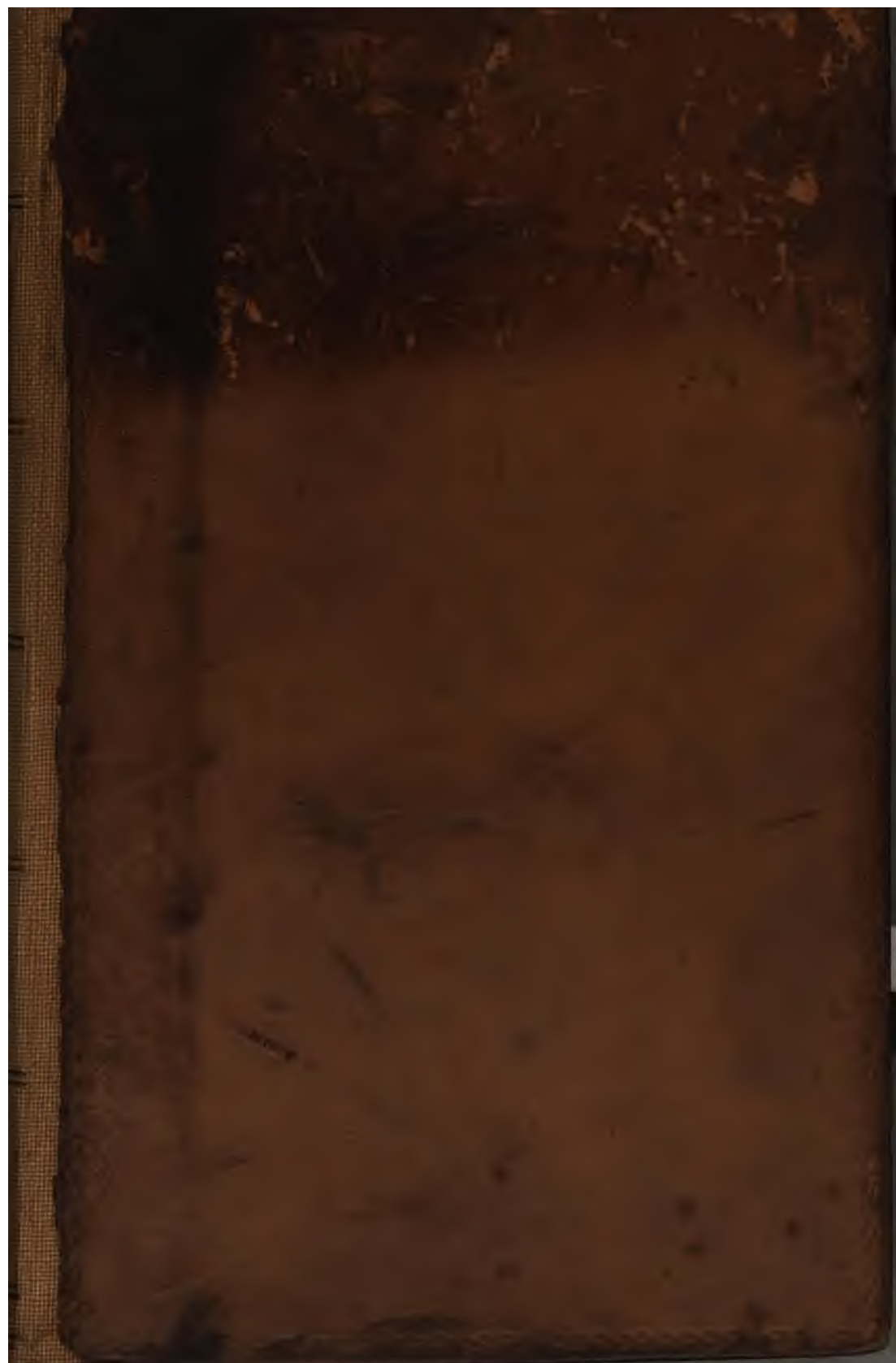
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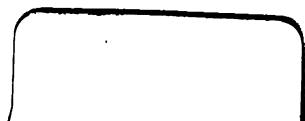
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1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes the need for transparency and accountability in financial reporting.

2. The second part of the document outlines the various methods and techniques used to collect and analyze data. It includes a detailed description of the experimental procedures and the statistical analysis performed.

3. The third part of the document presents the results of the study. It includes a series of tables and graphs that illustrate the findings of the research. The data shows a clear trend of increasing activity over time.

4. The fourth part of the document discusses the implications of the findings. It suggests that the results have significant implications for the field of study and may lead to further research in this area.

5. The fifth part of the document concludes the study. It summarizes the key findings and provides a final statement on the importance of the research. The authors express their gratitude to the funding agency and the participants.

6. The sixth part of the document includes a list of references and a list of figures. The references cite the works of other researchers in the field, and the figures provide a visual representation of the data.

7. The seventh part of the document is a list of appendices. It includes additional information that supports the findings of the study, such as raw data and detailed calculations.

THE
L A W S

RELATING TO

T H E P O O R;

BEING

A SUPPLEMENT TO THE SIXTH EDITION OF
BOTT'S POOR LAWS,

AS WELL AS TO THE FOURTH EDITION OF

NOLAN'S TREATISE

ON THE SAME SUBJECT.

INCLUDING ALL THE

CASES AND STATUTES TO THE DAY OF PUBLICATION.

BY JOHN TIDD PRATT,

OF THE INNER TEMPLE, ESQ., BARRISTER AT LAW.

LONDON:

SAUNDERS AND BENNING, LAW BOOKSELLERS,

(SUCCESSORS TO J. BUTTERWORTH AND SON,)

43, FLEET STREET.

1833.

ADVERTISEMENT.

THE following pages contain all the Cases which have been reported, and Statutes passed, relative to the Poor Laws, since the publication of the Sixth Edition of Mr. Bott's Work in 1827, and will also be found a useful companion to the fourth Edition of the late Mr. Nolan's Treatise on the same subject. This being intended as a continuation of Mr. Bott's Work, his arrangement has been carefully followed, and reference made throughout to the placitum, or number of the case, in each of the volumes of that work.

4, Elm Court, Temple,
Sept. 12, 1833.

A

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THE POOR LAWS.

OVERSEERS OF THE POOR.

Of and for what Place — 1 Bott, pl. 68.

1. *Bastock v. Ridgway*, E. T. 8 G. 4. 6 B. & C. 496.—This was a feigned issue to try whether the hamlet of *Singleborough*, in the parish of *Great Horwood*, in the county of *Buckingham*, was legally separated and divided from the township of *Great Horwood*, in the same parish, for the relief and maintenance of the poor. At the trial a verdict was found for the plaintiff subject to the opinion of this Court on the following case: The parish of *Great Horwood* consists of the township of *Great Horwood* and of the hamlet of *Singleborough*, which hamlet is a distinct and immemorial vill. The township of *Horwood* contains about 3000 acres, consisting almost entirely of open fields and waste or common lands. The case then proceeded to state a variety of facts relating to the extent and population of the parish. It appeared also, that bastardy bonds and certificates had, from 1679 down to 1753, been sometimes given to the overseers of the poor of *Great Horwood cum Singleborough*, sometimes “to the overseers of *Great Horwood*,” and at others to the overseers of *Singleborough*. On the 8th of *October* 1690, an agreement under the hands and seals of *Hugh Barker* and thirty-two other persons, including the rector of the parish therein described as of *Great Horwood* and *Singleborough*, whereby they did agree to have a house built at *Singleborough* for the use of *W. Gayton*, at the costs and charges of *Horwood* and *Singleborough*, and so to continue for the use of the poor of *Singleborough*, each hamlet paying their usual proportionable allowance for their relief; and that the poor of *Singleborough* and *Horwood* be kept in their respective hamlets. On the 24th *April* 1753 the following agreement was made by and between the churchwardens and overseers of the poor of the township of *Great Horwood* and certain inhabitants of the said township, and the churchwardens and overseers of the poor of the hamlet of *Singleborough* and certain inhabitants thereof: “Articles of agreement indented, made, concluded, and agreed upon, this 24th day of *April* 1753, between J. H. and J. J. churchwardens, and W. K. and H. C., overseers, and W. .K, R. W.,

A parish cannot legally be divided for the relief and maintenance of the poor, unless it cannot otherwise have the full benefit of the 43 *Eliz.* c. 2.

R. B., W. C., N. W., H. H., T. E., and T. V., and others, whose hands and seals are hereunto set and subscribed, occupiers of lands and tenements within the town, precincts, or division of *Great Horwood*, in the county of *Bucks*, for and on the behalf of themselves, and as far as by law they can on the behalf of the future churchwardens and overseers and occupiers of lands and tenements within the said town, precinct, or division, of the one part, and T. B. churchwarden, and T. B. senior overseer, and T. B. the elder, and T. B. the younger, and J. H. and others whose hands and seals are hereunto set and subscribed, occupiers of lands and tenements within the hamlet, liberty, or division of *Singleborough*, in the parish of *Great Horwood* aforesaid, on behalf of themselves, and, as far as by law they can, on behalf of all and every future and succeeding churchwardens and overseers and occupiers of lands within the said hamlet of the other part, as follows: Whereas frequent disputes do arise between the occupiers of lands in the said town and the said hamlet, concerning the reception of poor persons sent by orders or otherwise to each of the said places, and concerning the proportion of the poor-rates to be raised in each place, occasioned in some measure by considerable private donations, given for the maintenance and relief of the poor of one place, independent and exclusive of the other, by which great expenses frequently are incurred, disorder and confusion do ensue, and the poor by such means become more burthensome than they otherwise would be," &c. The articles of agreement then provided, that for the future each district should separately maintain its own poor, and that the township and hamlet should, in all respects concerning the poor, be considered as two different and distinct parishes. It then provided for the divisions of certain private donations and of the almshouses between the two districts. There was then a covenant to support and keep the articles of agreement, and to admit the same as evidence in any controversy which might arise touching the poor of either of the said places. Ever since the date of this agreement the township and hamlet respectively have maintained their poor separately, and paupers have been removed by orders of justices from foreign parishes to the township and hamlet respectively, and from the hamlet to the township. Since the year 1753 there have been separate poor-rates for the township and hamlet, and likewise separate appointments of overseers of the poor, with the exceptions hereinafter mentioned; that is to say, that in each of the years 1815, 1816, and 1817, a joint appointment of overseers of the poor of the whole parish was made by two justices of the peace, on the application of the inhabitants of the township of *Great Horwood*, without the consent and against the will of the inhabitants of the hamlet of *Singleborough*; but notwithstanding such joint appointments of overseers, the poor of the hamlet of *Singleborough* continued to be maintained and employed by the inhabitants thereof separately as theretofore, and without any interference on the part of the overseers or inhabitants of the township of *Horwood*, and separate rates were likewise made by the township and hamlet respectively for the relief of their respective poor. If the Court should be of opinion that the legal presumption to be formed from the facts stated is, that the hamlet of *Singleborough* was legally separated from the township of *Great Horwood*, for the relief and

maintenance of the poor, the verdict to stand, otherwise a verdict to be entered for the defendant.—LORD TENTERDEN C. J. The question reserved for our opinion on this special case is, whether the legal presumption to be formed from the facts stated in this case is, that the hamlet of *Singleborough* has been legally separated from the township of *Horwood* for the purpose of maintaining and relieving the poor. Now if we look to the statute 13 & 14 Car. 2. c. 12. s. 21. on which the separation must be founded, the largeness of the parishes is expressly put forward as the ground on which in particular parishes the benefit of the statute of *Elizabeth* cannot be enjoyed. I do not mean to say that because the largeness of the parishes is there expressly mentioned, that it is therefore the only ground by which the benefit of the statute of *Elizabeth* is not to be had; for that benefit might be lost by reason of the superabundant population in a district not itself exceedingly large. But still there ought to be something to shew that the parish has not had or could not have had the benefit of the statute. Now looking at the present state of things in this parish, I can see nothing to justify me in saying that it cannot now have the benefit of the statute 43 Eliz. c. 2.; and looking at the former state of things, I cannot see any thing to shew that it might not have had the benefit, nay the full benefit, of that statute. It appears that in 1753 the hamlet and township thought fit to separate; and the instrument of separation (which, however, is clearly invalid, unless it be founded on that necessity which the statute points out) recites that frequent disputes had arisen between the occupiers of lands in the town, precinct, or division of *Great Horwood* and hamlet of *Singleborough* concerning the reception of poor persons sent by orders to each of the said places, and concerning the proportion of the poor-rates to be raised in each place, occasioned in some measure by considerable private donations given for the maintenance and relief of the poor of one place independent and exclusive of the other, by which great expenses were incurred, and disorder and confusion ensued, and the poor became more burdensome than they otherwise would have been. All I can infer from this is, that there had been disputes arising out of a want of proper knowledge of and attention to the subject; not that there was any real difficulty in the whole parish maintaining its poor, but that the inhabitants of the hamlet and of the township thought fit to dispute. Their disputes are stated to have been occasioned in some measure by private donations. That does not shew that they could not have the benefit of the statute of *Elizabeth*. These donations, if properly administered, could have created no difficulty; for supposing all the rates of the whole parish applicable to the maintenance of the poor generally, the private donations would not be applicable to the relief of the whole poor, but would only be properly applied to those who did not receive any aid from the poor-rate, but who, having a little assistance from another quarter, were thereby enabled to maintain themselves. If those donations had been so applied, no difficulty would have arisen in the general distribution of the funds of the whole parish to the maintenance of the poor. I cannot say on these facts that any legal presumption arises that this parish could not have the benefit of the statute of *Elizabeth*. The agreement by which the separation was intended to be effected took place no

later than 1753. In *Rex v. Walsall (a)*, the separation took place very soon after the passing of the statute 13 & 14 Car. 2. Now there could not be any legal valid separation between the 43 *Eliz.* and the 13 & 14 Car. 2. But when we find (as soon as an act of parliament makes a separation lawful, in a case where a parish could not have the full benefit of the statute of *Elizabeth*,) such a separation actually taking place, that is to my mind abundant evidence that at, and even before that very time, it had been thought that the parish could not have the benefit of the statute of *Elizabeth*. But this inference by no means arises in a case where the separation has taken place by agreement made so late as the year 1753. Upon the whole, I am of opinion that there is no ground for presuming that the hamlet of *Singleborough* has been legally separated from the township of *Horwood*, for the purpose of maintaining its own poor.—BAYLEY J. I entirely agree with my Lord. This question turns upon the statute 13 & 14 Car. 2. c. 12. s. 21. which recites, “that the inhabitants of the several counties therein named, and many other counties in *England* and *Wales*, by reason of the largeness of the parishes within the same, have not nor cannot reap the benefit of the statute passed in the forty-third year of *Elizabeth*, for “the relief of the poor;” and then enacts, “that the poor within “every township or village shall be maintained within the township “or village wherein they were last lawfully settled.” That clause, therefore, applies to all the townships of the kingdom, where, by reason of the largeness of the parish, the inhabitants cannot have the benefit of the statute of *Elizabeth*. Now in this case, what is there to satisfy our minds that the inhabitants of this parish cannot have the benefit of the statute of *Elizabeth*? Mr. *Monro*, who has put this case as clearly and as strongly as it can be put, relies, to a certain degree, upon something that passed in the year 1690, and from that he infers, that at that period of time a separation took place. To constitute a valid separation of the hamlet and township, there ought to have been not only a separate collection of funds, but a separate and distinct application of the funds themselves; for although certain proportions of the funds may have been collected immemorially in particular districts within the parish, yet if they all afterwards constitute one entire fund, and were applied to maintain the poor of the parish generally, it cannot then be said of that parish, that by reason of its largeness it could not have the benefit of the statute 43 *Eliz.* The document of 1690 shews very clearly, that at that period of time the fund was not separate, but entire. That was a bargain whereby a variety of persons, living, some in *Horwood* and some in *Singleborough*, agreed that they would, at the costs and charges of *Horwood* and *Singleborough*, build a house for the use of *W. Gayton*, and so to continue for the use of the poor of *Singleborough*. Now why was *Horwood* to contribute to the expense of building a house for the poor of *Singleborough*, and of continuing it for the benefit of the poor of *Singleborough*, unless at that time there was one entire fund and one joint obligation to maintain the poor; and unless at that time *Singleborough* and *Horwood* had been one parish, and not separated so as to be excluded from enjoying the benefit of the statute of

(a) 2 B. & A. 157. 1 Bott, pl. 68.

Elizabeth? The agreement of 1753 seems to me to explain distinctly upon what principle it was, that from that time there was to be a separation, and to trace the cause of that separation to be, not the inability of the parish to reap the benefit of the statute of *Elizabeth*, but the convenience of the parties. It recites, that disputes had arisen between the occupiers of lands in the town and the hamlet. If at and before that period of time each had maintained its own poor out of a separate and independent fund, there would have been no such recital. It shews clearly that at that time there was one entire fund; that the inhabitants were from time to time differing among themselves, not with any legal foundation for such difference, but differing, as persons who do not understand what the law is are likely to differ, because the burdens of the poor of a part of one entire parish fell heavier on the whole parochial fund than the richer part of the parish thought right, and therefore they came to an agreement to separate, and not because they could not have the benefit of the statute of *Elizabeth*. Private donations are stated to have formed one of the grounds of these differences; but it is quite clear that in fixing the quantum of rate, those donations ought not to have been considered; for they were intended not to relieve the richer part of the parish from the contribution in shape of poor-rate, but to be given gratuitously to the poorer part of the parishioners, exclusively and independently of the poor-rate. In *The King v. Newell* (a), the parish consisted of two separate districts, each of whom immemorially made a separate rate, but the money, when raised, was blended together in one joint fund, though applied in certain proportions; and it was held, that that was no evidence to shew that the parish could not have the benefit of the statute of *Elizabeth*; and if that be so, then this subdivision is referable to an agreement binding on those persons only who happened at that time to be parishioners; for the inhabitants of a parish at one period of time cannot by agreement bind all the parishioners at another. For these reasons, I am of opinion, that the issue in this case ought to have been found for the defendant.—*HOLROYD and LITTLEDALE Js. concurred.*—*Postea* to the defendant.

2. *Rex v. Justices of Salop. (Case of Oldbury Township.) T. T. 2 W. 4. 3 B. & Ad. 910.*—A rule nisi had been obtained for a mandamus to the above justices, to appoint two overseers of the poor for the township of *Oldbury*, upon the following statement:—The parish of *Hales-owen* consists of the township of the borough of *Hales-owen*, the township of *Oldbury*, and ten other divisions or villis, situate in *Shropshire*, and three townships, *Lutley*, *Cradley*, and *Warley*, situate in *Worcestershire*. The parish is nine miles long and five broad. Two churchwardens have immemorially been appointed for the whole parish, and the rate for the repairs of the church is laid on the whole. The three *Worcestershire* townships have always had two overseers each, who, with one of the churchwardens of the parish, have made separate poor rates for each of those townships respectively, and they have supported their poor apart from each other and from the rest of the parish. But the justices of *Salop* have annually appointed four overseers for that part

The parish of *H.* consisted of three townships in the county of *W.*, and certain townships and districts in the county of *S.* The townships in *W.* had always had their own overseers, and relieved their own poor; but four overseers have been appointed for the division of the parish lying

(a) 4 *T. R.* 266. 1 *Bott*, pl. 64.

in S., and rates collected and applied for the relief of the poor of that division indiscriminately. On application by a township in the latter division, for a mandamus to the justices of S. to appoint overseers for that township, pursuant to 13 & 14 Car. 2. c. 12. s. 21. on the ground that the parish had not enjoyed, and could not enjoy, the benefit of the statute 43 Eliz. c. 2: facts being also stated to show the expediency of a separate appointment:

Held, that the divisions of the parish in W. and in S. could not be considered, with reference to the statute of Charles, as distinct parishes; and the mandamus was granted.

of the parish which is in *Shropshire*, comprehending *Oldbury*, the borough of *Hales-owen*, and the ten villis abovementioned, which overseers, with one of the churchwardens, have taken order and made rates for the poor: and these have been exclusively applied to the relief of the poor of those places: there is a joint account of all disbursements on the part of the last-mentioned places, and a general settlement of such account at the end of the year, and the expenses are borne by the inhabitants of the last-mentioned places equally. There has always been a distinct constable for the borough of *Hales-owen*, and one for the residue of the parish, exclusively of the townships of *Oldbury*, *Lutley*, *Cradley*, and *Warley*, (each of which has its own constable,) but including the ten villis, which have also their headboroughs respectively. All the townships and villis repair their highways separately. *Oldbury* contains 4651 inhabitants and 924 houses, and is four miles from the borough of *Hales-owen*, where all meetings respecting rates and the relief of the poor are held. It has a chapel of its own, with a licensed chaplain of the church of *England*. The contribution to the poor from *Oldbury* nearly equals that from the borough of *Hales-owen* and the ten villis together; the property of the respective places, according to a valuation made in 1830, is in the same proportion. It was alleged that the parish of *Hales-owen* could not and cannot, nor could or can the township of *Oldbury*, reap the benefit of the statute 43 Eliz. c. 2. as to the maintenance of the poor, by reason of the largeness of the parish, the population, and the fact that three of the townships have immemorially maintained their own poor. An application had been made to the justices to appoint two overseers for *Oldbury* township exclusively, but they had refused. In opposition to the rule, it was stated that the concerns of the poor in the *Shropshire* part of the parish had immemorially, as was believed, been administered by the churchwardens and by four overseers, appointed respectively for four quarters, (*Oldbury* being one,) into which that part of the parish was divided; that those overseers paid the money which they collected to a treasurer, and it was expended under the direction of a select vestry for that part of the parish; that the borough of *Hales-owen* was in a central situation; that the management by four overseers as above had been found beneficial, and no complaint had arisen respecting it till 1830, when a new assessment was made for the *Shropshire* part of the parish, by which a larger, and, as was represented, a more just share of the contribution to the poor, was imposed upon *Oldbury*.—Lord TENTERDEN C. J. now delivered the judgment of the Court. After stating the facts, his Lordship said:—Looking at the parish of *Hales-owen* as a whole, it is clear there never, within memory, has been one set of overseers for the parish; there has been one set for the townships in *Worcestershire*, and one for the part of the parish lying in *Shropshire*. Then the parties applying for the rule relied upon *Rex v. Sir Watts Horton* (a), which has been followed up in principle by several other cases. On the other hand, a case in *Sir T. Raymond*, p. 476., was referred to in the course of the argument, where a parish was situate partly in *London* and partly in *Middlesex*, each part having distinct officers, making distinct rates, and passing distinct accounts before the jus-

(a) 1 T. R. 374. 1 Bott, pl. 61.

tices of the respective counties; and the question being as to the liability to maintain children who were left chargeable to one of the divisions, it was held that each division must be looked upon as a several parish. We have looked into that case, and we think it is no authority to shew, that in every case in which a parish lies in two counties, each part may be considered as a separate parish. The case happened after the statute of *Charles*, and probably was no more than an application of the provisions of that statute to each part as a distinct township; at all events, there is nothing in it calculated to raise any reasonable doubt on the application of *Rex v. Sir Watts Horton* to the case now before the Court. The rule must therefore be absolute.

POOR'S RATE.

In what Place the Property shall be rated.—1 Bott. pl. 111.

3. *Rex v. Mitton*, T. T. 10 G. 4. 9 B. & C. 810.—Upon an appeal against a rate made in February 1826, for the relief of the poor of the hamlet of *Lower Mitton*, in the parish of *Kidderminster*, in the county of *Worcester*, whereby the *Staffordshire and Worcestershire Canal Company* were rated for their basins, towing paths, and that part of their canal, and the locks thereon, lying within *Lower Mitton*, and for the tolls and duties arising therefrom due at *Lower Mitton* on 4000*l.* at the sum of 200*l.*, the sessions amended the rate by reducing the sum for which the company were rated from 4000*l.* to 706*l.* 9*s.* 6*d.*, subject, as to lock duties hereinafter described, to the opinion of this Court on the following case:—By an act of the 6 G. 3. the company are empowered to take rates and duties for tonnage and wharfage for all goods conveyed on the canal, not exceeding three halfpence per mile for every ton, and so in proportion for any greater or less quantity than a ton. By another act of the 10 G. 3. the company are authorised to take tonnage proportionably for any less distance than a mile which any commodities shall be conveyed on the canal, and the boats, barges, and other vessels passing through the two locks erected between the river *Severn* and the canal basin are to pay a toll or lock due of one penny per ton in lieu of the tonnage of three halfpence per mile fixed by the said recited act of the 6 G. 3. The canal basin is twelve feet below the level of the canal, and twenty-four feet above that of the *Severn*, with which it communicates through the locks mentioned in the enactment. These two locks receive the necessary supply of water from the basin, which is itself supplied partly from the canal and partly from the *Severn*. The supply from the *Severn* is raised by means of a steam engine, which is used for no other purpose than to raise this supply. The lock dues received by the company for boats, barges, and other vessels passing through the said two locks from November 1825 to November 1826 amounted to 350*l.* The said two locks, basin, and steam engine are locally situated in the hamlet of *Lower Mitton*. The boats, barges, and other vessels which pass through these two locks, for the most part bring into the basin cargoes to be taken up the canal, and which in fact are subsequently so taken, or take out of the basin cargoes which have been brought down the canal, and the toll of 1*d.* per ton is due and paid for merely passing through the two locks from the canal basin to the *Severn*, and vice versâ. The harges that pass from the *Severn* into

Where a canal company were authorised to receive a mileage toll for goods conveyed on the canal, and in lieu of the mileage duty, distinct tolls on all vessels passing through two locks; it was held, that the whole annual profits of the locks were, for the purpose of being rated to the relief of the poor, to be considered as having been produced in that parish where the locks were situate, and not in the several parishes through which the canal passed in proportion to the length of the canal in each parish.

The annual profit is the rent which a tenant would give, he paying the poor rates and the expenses of repairs and the other annual expenses ne-

cessary for making the subject of occupation productive, and allowing him a deduction from the rent where the subject is of a perishable nature, towards the expense of renewing or re-producing it.

the canal basin cannot navigate the canal, and the boats that come down the canal rarely pass into the *Severn*, but tranship their cargoes in the basin into the *Severn* barges, and the toll for passing the two locks is in both cases paid for the barges and boats. If a canal boat passes into the *Severn* from the basin, it pays the lock dues in addition to the mileage dues paid for carrying goods along the canal. The lock dues paid as above stated are the only profits which the canal company derive from the *Severn* locks. The court of quarter sessions were of opinion that the profits of the locks were not rateable in *Lower Mitton* only, but that they should be divided amongst all the parishes through which the canal runs, in proportion to the length of canal in each parish, in the same manner as the general profits of the canal are divided. If this Court should be of opinion that the sessions were wrong, the rate was to be amended by increasing the amount at which the company were rated from 706*l.* 9*s.* 6*d.* to 1056*l.* 9*s.* 6*d.*—BAYLEY J. now delivered the judgment of the Court. The question in this case is, whether the profits of the locks situate in *Lower Mitton* are rateable in all the parishes through which the canal runs, in proportion to the length in each parish, or not. The sessions were of opinion that they were, and we think that their decision was wrong. It is now fully established, (*Rex v. Milton* (a), *Rex v. Palmer* (b), that the proprietors of a canal or navigation are rateable as occupiers of the land covered with water in the particular parish in which the land lies; and it follows from thence, and it was so decided in *Rex v. Kingswinford* (c), that they are rateable in each parish, in proportion to the profit which that part of the land covered with water which lies in the parish produces. If it is more productive than other parts of the canal, either because there is more traffic, or because larger tolls are due upon it, or because the outgoings and expenses there are less, it must be assessed at a higher proportionate value. It is, however, contended, that there is a distinction between the case of a canal or navigation, and a lock; and that the lock is profitable, because it is supplied with water from the rest of the canal lying in other parishes. This argument, supposing it to be well founded, only proves that a *part* of the source of profit is derived from the other parishes in which the canal lies, and that, consequently, a part only of the lockage dues ought to be ascribed to those parishes; for the dues are payable as well for the use of water derived from the *Severn*, as from the canal, and also for the use of the soil and fixed machinery of the locks; and, therefore, the rule adopted by the sessions, even according to the argument used by the respondents, was wrong. We are, however, of opinion, that there is no distinction as to the principle of its rateability between a lock and a portion of a canal or river navigation; and that, whether the subject-matter of the occupation be productive of itself, or rendered productive by something brought from another parish, or by being used in conjunction with property in another parish, no difference is to be made in the mode of rating. Thus, whether the water in a canal be brought from the same parish, or another parish, whether conveyed in pipes, or carts, or by engines, makes no difference, if the land in which it is placed be thereby rendered more valuable. It makes no difference whether it remains

(a) 3 B. & A. 112. 1 Bott, pl. 107.

(b) 1 B. & C. 546. 1 Bott, pl. 108.

(c) 7 B. & C. 236. post. pl. 13.

comparatively still as in a canal, or moves constantly as in a river, or occasionally as in a lock; nor does it make any difference that, unless there was a canal in another parish connected with the lock, no profit would be gained. It might as well be contended that the profits of a bridge, which would not arise unless there were roads to it, or of land rendered more valuable by roads in an adjoining parish, should be rated in part only in the parish in which such bridge or land is situate. The order of sessions must therefore be quashed; and the sessions must rate the company according to the annual profit or value which the subject of occupation within the parish produces. This, in general, would be properly estimated at the rent which a tenant would give, he paying the poor rates and the expenses of repairs, and the other annual expenses necessary for making the subject of occupation productive; and a further deduction should be allowed from that rent, where the subject is of a perishable nature, towards the expense of renewing or reproducing it. This is the rule laid down in *Rex v. The Duke of Bridgewater's Trustees* (a), and *Rex v. Tomlinson* (b). It must therefore be referred back to the sessions, to adjust the rate upon this principle.

4. *Rex v. Oxford Canal Company*, M. T. 10 G. 4. 10 B. & C. 163. —Upon appeal by the company of proprietors of the *Oxford Canal* Navigation, against a rate made for the relief of the poor of the

By a canal act, the proprietors of the *Oxford Canal* were empowered to

take a mileage tonnage for coals and other merchandizes, excepting that they were not to take a tonnage upon coals for a distance of two miles measured from L. to R. As to those two miles it was enacted that the proprietors of the *Coventry Canal* should take all the rates and duties payable by virtue of that act for all coals carried from any part of the *Oxford Canal* within those two miles; and the proprietors of the *Oxford Canal* were to take all the rates, payable by an act for making the *Coventry Canal*, for all goods, except coals, conveyed upon any part of the *Oxford Canal*, and afterwards upon the *Coventry Canal*, within three miles and a half of the junction of the two Canals. The point of junction of the *Oxford* and *Coventry Canal* was in the parish of F. That parish contains one mile and nine hundred and sixty-three yards of the *Oxford Canal*, being part of the two miles above mentioned, and also two miles and a quarter of the *Coventry Canal* being part of the three miles and a half above mentioned.

By an act, 33 G. 3. c. 80., for making the Grand Junction Canal (reciting that it was apprehended the intended canal would be injurious to the company of proprietors of the *Oxford Canal*), it was agreed that the compensation thereafter mentioned should be made to them as an indemnification against such injury. It then authorized the proprietors of the *Oxford Canal* to take, for all coals that should pass from the *Oxford Canal* into and upon the Grand Junction Canal, the sum of 2s. 9d. per ton, without regard to the distance the same should pass on the *Oxford Canal*; and for all other goods which should pass from any navigable canal into or upon the *Oxford Canal*, and from thence into or upon the Grand Junction Canal, or from the Grand Junction Canal into or upon the *Oxford Canal*, and from thence into or upon any other canal, the sum of 4s. 4d. per ton, without any regard to the distance the same should pass on the *Oxford Canal*:

Held, first, that the proprietors of the *Oxford Canal* were rateable to the poor in the parish of F. for the mile tonnage for merchandize, not being coals, passing along the *Oxford Canal* in that parish.

Secondly, that they were rateable in that parish for the mile tonnage payable to them in respect of tolls collected on the *Coventry Canal*, in the proportion which one mile nine hundred and sixty-three yards bears to two miles.

Thirdly, that they were rateable in that parish for such a proportion of the compensation tonnage payable to the *Oxford Canal Company* under the Grand Junction Canal act for merchandize, not being coals, passing from the *Coventry Canal* along the *Oxford Canal* to the Grand Junction Canal, and vice versa, and consequently through the parish of F., as one mile nine hundred and sixty-three yards bears to thirty-four miles and seven-eighths, the distance between the points at which the *Oxford Canal* joins the *Coventry* and Grand Junction Canals.

Fourthly, that they were rateable in that parish for the same proportion of the compensation tonnage for coals passing along the same portion of the *Oxford Canal* from the *Coventry Canal* into the Grand Junction Canal.

Held, further, that in fixing the amount of the rate, the sum paid by the proprietors for the poor-rate, the expense of collecting the tolls, of repairing the banks of the canal, and of supplying it with water, ought to be deducted from the gross profits.

(a) 9 B. & C. 68, post.

(b) 9 B. & C. 162. post. pl. 5.

parish of *Foleshill*, in the county of the city of *Coventry*, whereby the company were rated for their messuages, buildings, stop-land, towing-path, and that part of the canal lying within the said parish, and for the tolls, duties, and tonnages arising therefrom, estimated as of the annual value of 2000*l.*, at 100*l.*; the sessions confirmed the rate, subject to the opinion of this Court on the following case : — By the 9 G. 3. c. 70., the appellants were empowered to make and maintain a navigable canal from the *Coventry* Canal Navigation to the city of *Oxford*. The appellants are the owners and occupiers of the canal which has been made by virtue of this act. The length of the canal is as follows ; From the northern extremity at *Longford*, where it joins the *Coventry* Canal to *Bramston*, the point of union with the Grand Junction Canal, is thirty-four miles seven-eighths. From *Bramston* to *Napton*, the point of union with the *Warwick* and *Napton* Canal, is seven miles. From *Napton* to *Oxford*, the southern extremity, forty-nine miles one eighth ; and the total length of the *Oxford* Canal is ninety-one miles. By the said *Oxford* Canal Act the company are empowered to levy a mile tonnage for coals, and other merchandize, carried upon this canal, which they levy accordingly, excepting only that they are not to take a tonnage upon coals for a distance of two miles, measured from *Longford* towards *Bramston*, respecting which it is enacted as follows : “ Provided nevertheless, and be it further enacted, that it shall be “ lawful for the company of proprietors of the *Coventry* Canal Na- “ vigation, their successors and assigns, from time to time and at all “ times hereafter, to take and receive all the rates and duties payable “ by virtue of this act for all coals that shall be carried or conveyed “ from any part or parts of the said intended cut or canal, within “ two miles from the junction thereof with the *Coventry* Canal at “ *Longford* aforesaid, which said rates and duties to be collected and “ received shall be and are hereby vested in the said company of “ proprietors, their successors and assigns, and shall and may be “ collected and levied by them in such manner and with such and “ the like remedies and powers for collecting and levying thereof, as “ any rates or duties granted by this act can or may be collected or “ levied, and the same, when received, shall be applied and disposed “ of to and for the same uses, intents, and purposes, as the several “ rates and duties granted by an act of 8 G. 3., entitled “ ‘ An Act “ for making and maintaining a navigable canal from the city of “ ‘ *Coventry*, to communicate upon *Tradley Heath*, in the county “ ‘ of *Stafford*, with a canal now making between the rivers *Trent* “ ‘ and *Mersey*,’ are thereby directed to be applied and disposed of, “ and to no other use or purpose whatsoever : and that it shall be “ lawful for the said company of proprietors of the navigation in- “ tended to be made by virtue of this act, to take all the rates and “ duties payable by the said recited act for all goods, wares, and “ merchandizes, except coals, which shall be navigated, carried, or “ conveyed upon any part or parts of the said canal intended to be “ made by virtue of this act, and afterwards upon the said *Coventry* “ Canal, within three miles and a half of the junction of the two “ canals at *Longford*, towards *Coventry*, which said last-mentioned “ rates and duties so to be collected and received, shall be and are “ hereby vested in the said company of proprietors of the *Oxford* “ Canal Navigation, their successors and assigns, and shall and may

" be collected and levied by them in such manner, and with the like remedies and powers for collecting and levying thereof, as any of the rates and duties directed to be paid by the said recited act can or may be collected and levied, and the same, when received, shall be applied and disposed of to and for the several uses, intents, and purposes, as the several duties granted by this act are directed to be applied and disposed of, and to and for no other use or purpose whatsoever; anything contained in the said recited act or this act to the contrary notwithstanding." The said recited act of the 8 G. 3. imposes a mile tonnage on coals and all other merchandizes passing along the *Coventry* Canal. The point of junction of the *Oxford* and *Coventry* Canals is in the respondent parish, which parish contains one mile nine hundred and sixty-three yards of the *Oxford* Canal, being part of the two miles above mentioned, and also two miles and a quarter of the *Coventry* Canal, being part of the three miles and a half above mentioned. The company of proprietors of the *Oxford* Canal are neither owners nor occupiers of any part of the *Coventry* Canal. The *Oxford* Canal Company are further entitled to certain compensation tonnages, by virtue of the Grand Junction Canal Act, 33 G. 3. c. 80., which enacts as follows: " And whereas, it being apprehended that the making of the said intended canal will be injurious to the company of proprietors of the *Oxford* Canal Navigation; it is agreed that the compensation herein-after mentioned, should be made to them as an indemnification against any such injury: Be it therefore enacted, That instead of the tolls, rates, and duties which would have been payable to the company of proprietors of the said *Oxford* Canal Navigation, by virtue of certain acts of parliament of the ninth, fifteenth, and twenty-sixth years of his present Majesty, for making and maintaining the said *Oxford* Canal Navigation, or any of them, for or in respect of the coals, goods, and other things herein-after mentioned and made chargeable with certain rates to the company of proprietors of the said *Oxford* Canal Navigation, in case no alteration had by this act been made in the tolls, rates, and duties payable to them, it shall be lawful for the company of proprietors of the said *Oxford* Canal Navigation to take for their own proper use and behoof the respective rates hereinafter mentioned, that is to say, for all coals that shall pass from the said *Oxford* Canal into or upon the said intended canal, the sum of 2s. 9d. a ton, and so in proportion for a less quantity than a ton, without any regard to the distance the same shall pass on the said *Oxford* Canal; and for all other goods, wares, merchandizes, and things, which shall pass from any navigable canal into or upon the said *Oxford* Canal, and from thence into or upon the said intended canal, or from the said intended canal into or upon the said *Oxford* Canal, and from thence into or upon any other navigable canal, except lime and limestone, and also except all such articles and things as are at present exempt from the payment of any tolls, rates, or duties to the company of proprietors of the said *Oxford* Canal Navigation, the sum of 4s. 4d. per ton, and so in proportion for a less quantity than a ton, without any regard to the distance the same shall pass upon the said *Oxford* Canal." The *Oxford* Canal Company are further entitled to tolls, by the following clauses of the *Warwick and Napton* Canal Act, passed 34 G. 3. c. 38.: " And

“whereas the making the said intended canal may be injurious to the company of proprietors of the *Oxford Canal Navigation* unless provision be made for preventing any such injury: Be it therefore enacted, That it shall be lawful for the company of proprietors of the said *Oxford Canal Navigation* to ask, demand, take, and receive, to and for their own proper use, over and above all the rates of tonnage or duties which they are or shall be entitled to for or in respect of any coals, goods, and merchandizes, or other things navigated or passing in or upon any part of the said *Oxford Canal*, by virtue of any acts of parliament now in force, except as hereinafter is excepted, the rates or duties hereinafter mentioned, that is to say, for all coals which shall be navigated out of the intended canal into the *Oxford Canal* the sum of 2s. 9d. per ton, and so in proportion for a less quantity than a ton, for all goods, wares, merchandizes, and things, (except lime and limestone, and manure,) which shall be navigated out of the said intended canal into the said *Oxford Canal*, or out of the said *Oxford Canal* into the said intended canal, (except such as shall be bona fide navigated from the *Coventry Canal*,) or from any intermediate place between the said *Coventry Canal* and the said intended canal, into the said intended canal, the sum of 4s. 4d. per ton, and so in proportion for a less quantity than a ton.” The *Oxford Canal Company* are rated in the parish of *Foleshill* in the aforesaid sum of 2000*l.*, in manner following:—

1. For the mile tonnage payable to the *Oxford Canal Company* for merchandizes (not being coals) passing along in the *Oxford Canal*, in the parish of *Foleshill*, for as far as such merchandize passes into that parish, - - - £450 0 0
2. For the mile tonnage payable to the *Oxford Canal Company* in respect of tolls collected on the *Coventry Canal*, in the proportion of one mile nine hundred and sixty-three yards to two miles, 60 0 0
3. For such a proportion of the compensation tonnage payable to the *Oxford Canal Company* under the Grand Junction Canal Act, for merchandize (not being coals) passing from the *Coventry Canal* along the *Oxford Canal* to the Grand Junction Canal, and vice versa, and consequently through the parish of *Foleshill*, as one mile nine hundred and sixty-three yards bears to thirty-four miles and seven eighths, - - - 900 0 0
4. For the same proportion of the compensation tonnage for coals passing along the same portion of the *Oxford Canal* from the *Coventry Canal*, in the Grand Junction Canal, - 1090 0 0

£2500 0 0

From this sum of 2500*l.* a deduction of 20*l.* per centum has been made, as the reasonable profit of a supposed lessee - 500 0 0

£2000 0 0

Which leaves the sum of 2000*l.* as the supposed rental of the above-mentioned tolls, and upon which the rate has been made. The mile tonnage payable to the *Coventry Canal Company* for coals passing along the *Oxford Canal*, in the parish of *Foleshill*, is 350*l.* The parochial rates on landed property in *Foleshill*, payable by the occupiers, are six shillings in the pound on the amount of their actual rents. The sum which the *Oxford Canal Company* receive upon

all their compensation tonnages, taken in the proportion of one mile nine hundred and sixty-three yards to ninety-one miles, is 1000*l.*; the expense of collecting the tolls for which the canal company are assessed is 5*l.* per centum. The annual repairs of the canal in the parish of *Foleshill* amount to 20*l.* The annual repairs of the *whole* canal amount to 4000*l.* The expense of works (such works not being situated at *Foleshill*), by which that part of the canal which lies in the parish of *Foleshill* is supplied with water, amounts to 100*l.* The works by which that part of the canal which lies in the parish of *Foleshill* is supplied with water supply the canal for a distance of forty miles. The total amount of the tolls collected on the canal is 50,000*l.* The tolls payable throughout the said distance of forty miles, estimated on the principle of the assessment in the parish of *Foleshill*, amount to 25,000*l.* The questions for the consideration of this Court are, First, For what tolls, and for what proportions of such tolls, are the *Oxford Canal Company* rateable in the respondent parish? Secondly, To what deduction are the company entitled, to place them on an equal footing with the other occupiers of land in the said parish? The rate is to be amended accordingly.—BAYLEY J. The principle which we lay down is this: The sessions must make an allowance for a proportion of the reasonable expense of supplying water. They must also make allowance for the poor rates, the expense of repairs, and of collecting the tolls. The only point, therefore, which remains for our consideration is, whether any part of the compensation tonnage can be considered as having been earned in the parish of *Foleshill*; and, upon that point, we will consider of our judgment.—BAYLEY J. delivered the judgment of the Court. The several questions which were argued on both sides, in this case, were disposed of in the course of the argument, except that arising upon the fourth item of charge on the company mentioned in the special case. It was contended that the company were not rateable upon the proportion of the compensation tonnage for coals, passing along the portion of the *Oxford Canal*, lying in the parish of *Foleshill*; from the *Coventry Canal* into the *Grand Junction Canal*; because it was said that the tonnage on coals was a compensation to the company for the injury done by the construction of the *Grand Junction Canal*, pursuant to the 32 G. 3. c. 80., to their *former coal tonnage*; and as the company had, before the passing of that act, no coal tonnage in the parish of *Foleshill*, no part of the compensation tonnage could be considered as earned in that parish. It was further urged, that the new tonnage dues were given by that act *instead* of the old dues, and must be considered as standing in respect of their rateability in the same situation. Upon reference, however, to the *Grand Junction Canal Act*, it would seem that the new coal tonnage is not given as a compensation for the injury to the company, in respect of the old coal tonnage, *specifically*; but the recital shews, that because it was apprehended that the intended canal would be injurious to the *Oxford Canal*, *generally*, certain compensations were to be made for that *general* injury; and the legislature has thought that an indemnification would be given by certain new dues upon coals and other goods carried to or from the intended canal, from or to the *Oxford Canal*, without regard to the distance which they should be carried

on the latter: and these dues are not to be in addition to the old dues, but the public are to pay one class of dues only; and this appears to be the meaning of the introductory words of the clause, making them payable *instead* of the former tolls, &c. The Grand Junction Canal would probably *benefit* the *Oxford* Canal in that part of it which formed the line of communication between that and the *Coventry* Canal (a), and it would probably be in other parts where they, to a certain degree, were parallel (b), that the injury would occur; and the intention probably was to recompense the injury in one part by compensation upon another. The question, however, is not for what injury the right to receive the new tonnage dues is given as a compensation; or, in other words, for what reason the legislature have given that right to the *Oxford* Canal Company; but what is the legal liability of the company in respect of these dues, when received by them, to contribute to the poor rates. The company are rateable in each parish for the net annual profit of the portion of the canal lying in that parish; in other words, for what the canal in each parish earns, and the tonnage dues are paid by the owners of goods *for passing along the canal*, and are received by the company *for the use of it*, though the reason of being enabled to receive them by the legislature was, that their canal was likely to be injured by the new navigation. It is on the ground that these dues are received *for the use of the canal*, and are earned by the canal, that the company were held rateable for them in *Rex v. Oxford Canal Company* (c). For the passage of coals, therefore, along the part of the canal lying in *Foleshill*, some part of the new dues is received by the company, and in respect of that part the rate is proper. It is true that the consequence is, that for coals passing along that part of the canal, being within two miles from the junction with the *Coventry* Canal, the company would receive more dues, and therefore be rateable for more than those which pass along other parts; for they would receive for such coals the proportion of compensation dues above mentioned *directly*, and indirectly a part of the tonnage duties on other goods on the first three miles and a quarter of the *Coventry* Canal, for which it is admitted by their counsel that they were properly rated in the rate in question. This consequence, however, can make no difference in the construction of the act of parliament, which makes the dues payable by the public to the company *for passing along their canal*, and which therefore constitute a part of the profits of the portion of the canal through which they pass. The canal earns no part of the *original* tonnage upon coals carried through the two miles of *Foleshill* into the *Coventry* Canal, because it receives its *equivalent* by the tonnage upon other goods for the first three miles and a half upon the *Coventry* Canal; but those two miles contribute to earn the *compensation* tonnage, and for that there is no equivalent.—The rate is therefore to be confirmed in this respect; but the case must be remitted to the sessions to make the several deductions to which the company were held, in the argument, to be entitled.

(a) From *Longford* to *Branston*.

(b) From *Napton* to *Oxford* the *Oxford* Canal is nearly parallel to the Grand Junction.

(c) 4 B. & C. 74. 1 Bott, pl. 110.

In what Proportion. — 1 Bott, pl. 131.

5. *Rex v. Tomlinson*, H. T. 9 & 10 G. 4. 9 B. & C. 163. — Upon an appeal against a rate made for the relief of the poor of the parish of *Stoke-upon-Trent*, in the county of *Stafford*, the justices at sessions amended the rate, subject to the opinion of this Court upon the following case: — In the above rate, which was made upon a recent survey and valuation of the rateable property in the parish of *Stoke-upon-Trent*, the occupiers of farms, lands, and tithes, and also of market-tolls throughout the said parish, were assessed in respect of such property respectively upon two-thirds of their estimated net yearly rent, payable to the landlord, and the occupiers of houses, potworks, and every other description of building, and also the occupiers of collieries and coal-mines were assessed in respect of such property respectively upon only one half of their estimated net yearly rent or royalty payable to the landlord. In the same rate, the lessees of certain waterworks were assessed in respect of their waterworks and waterpipes within the parish upon only one-half of their estimated yearly rental value; but the rate was amended by the Court as to them, by assessing them upon two-thirds of such rental value, being in the same proportion as in the case of land. The question for the consideration of this Court was, Whether, as the occupiers of farms, lands, tithes, market-tolls, and waterworks throughout the said parish are assessed upon two-thirds of their estimated net yearly rent payable to the landlord, the occupiers of collieries and coal-mines ought not to be rated in the like proportion upon two-thirds of the estimated net yearly mine-rent or royalty paid to the landlord, instead of upon one-half as charged in the said rate? — BAYLEY J. The question in this case was, Whether a rate was upon an unequal, and consequently an unjust, principle? It estimated the value of all property according to the net yearly rent; but it fixed the rate according to two-thirds of the rent in the case of lands, &c., whilst it fixed it according to one-half only in the case of houses and collieries: and whether this made the rate necessarily unequal was the question. It was not disputed but that the sessions were in general the proper judges of value; but it was insisted, that if they fixed the proportions by a wrong rule, this Court might and ought to interfere. And if the proportions have been fixed by a rule which we can pronounce to be wrong, we are of opinion our interference is requisite. Can we, then, pronounce the rule acted upon in this case to be wrong? It was almost admitted, that there might properly be a distinction in the proportions between houses and land, though it was urged there could not be one between land and collieries; but when the consequences of this admission were seen, the admission was withdrawn. We are, however, of opinion, that there may properly be a difference in the proportion of the annual rent, upon which houses and lands are to be rated: it belonging to the sessions to fix the precise proportion. We also think, that houses and collieries may be classed together. The rate is to be made on the occupier according to the annual profit or value which the subject of occupation produces; and it makes no difference in the amount of the rate, whether the occupier be tenant or owner. In the case of houses, the annual profit or value

Where a poor-rate was made upon two-thirds of the net rent of lands, and one half the net rents of collieries: Held, that this might be a fair and equal mode of rating; and as the rate did not manifestly appear to be unequal, the Court refused to quash it.

is always a *part* only of the annual rent paid to the landlord. Some portion of that rent ought to be set apart to form a fund for repairing, or rebuilding when necessary; in other words, to maintain, or reproduce the subject of occupation: a much less part, if any, of the annual rent of land is wanted for either of those purposes; and the whole in some cases, or nearly the whole in others, is annual profit or value. This difference is mentioned by Lord *Mansfield*, in *Rex v. Brograve*. In the case of collieries, also, a part of the annual rent must be appropriated to repair and replace the works and engines, and in that respect they are in the same situation with houses. The sessions were, therefore, warranted in making a difference in the proportion of rating, with reference to annual rent, between houses and collieries on the one hand, and land on the other; and it is impossible for us to say that the proportion which they have fixed is not the right one. It was urged on the argument, that the sessions have fixed the rate according to unequal proportions of *net* rent; and it was contended, that by the words "*net rent*," was meant the clear annual rent, after every deduction: including, therefore, the part to be set aside for repairs, and reproduction of the subject of the rate; and, consequently, that the rate was unequal. But we cannot attribute any such meaning to those terms for the purpose of invalidating the rate. We think they mean only that part of the rent which goes into the pocket of the landlord, and which is the rent paid by the tenant, after deducting taxes and charges of collection: and this construction will support the rate. If the rate had been according to different proportions of the *clear* annual *profit* or *value* of the subject of occupation, it would have been otherwise; but annual rent is not annual profit or value. We are, therefore, of opinion, that the order of sessions should be confirmed.

Of the Persons and Property liable to be rated.—1 Bott, pl. 255.

Canal lands
exempted by
act of parlia-
ment, from
rate in respect
the value of the
lands increased
by the tolls.

Tolls *per se*
not rateable to
the poor's rate.

6. *Rex v. St. Mary, Leicester*, T. T. 57 G. 3. 6 M. & S. 400.—By a rate made on the 27th June 1816, for the relief of the poor of *St. Mary*, in *Leicester*, the company of proprietors of the *Leicestershire* and *Northamptonshire* canal were rated at 1500*l.* for their canal, towing-paths, toll-house, tonnage dues or rates, and charged with the sum of 225*l.* towards the said rate. On appeal, the sessions for the borough of *Leicester* amended the rate as hereafter stated, subject to the opinion of this Court on a case, which stated the making of the rate as above, and that by an act 33 G. 3. intituled "An act for making and maintaining a navigation from the town of *Leicester* to communicate with the river *Nen*, in or near the town of *Northampton*, and also a certain collateral cut from the said navigation," the said company were incorporated by the name and style of "The Company of Proprietors of the *Leicestershire* and *Northamptonshire* Union Canal," and were empowered to make, complete, and maintain the said canal, and to take certain rates for tonnage and wharfage for all goods carried or conveyed on the said canal, or collateral cut; and by section 50. it is enacted, "That in respect of the lands to be purchased for the use of the said undertaking, the said company of proprietors, and their successors, shall bear and pay land-tax and all parochial taxes, equally and proportionably with other lands in the parishes or townships where the same shall be respectively situate, the same to be considered as land

"after the same shall be cut, and to be estimated according to the mean value of the lands lying on each side thereof;" and by sect. 106, it is enacted, "That the said navigation canal, or collateral cut, or any of the works whatsoever to be made by virtue of this act, shall not be subject to the control, direction, survey, or order of any commission of sewers, or to any law or statute relating to sewers whatsoever; and the said company of proprietors shall and may, from time to time hereafter, be rated and charged to all parliamentary and parochial taxes, rates, and assessments, for or on account of any lands or grounds to be purchased or taken, or of any warehouses or other buildings to be erected by them in pursuance of this act, *in the same proportions as other lands, grounds, and buildings, adjoining to or lying near the same, are or shall be rated or charged.*" The company have a toll-house in the said parish of *Saint Mary*, at which part of the rates and tolls of the canal, to a considerable amount, are collected and received; and they were rated for their rates and tolls becoming due and payable in the said parish at 225*l.*, being at the rate of 3*s.* in the pound on the sum of 1500*l.*, the amount of the rates and tolls becoming due and payable in the said parish. The sessions amended the rate, by reducing it to 20*l.* 6*s.* 8*d.*, being the value of the lands and buildings belonging to the company in the said parish, in proportion to the lands and buildings adjoining, exclusive of the tolls; in which proportion the company had been uniformly rated from the passing of the act, till the rate in question. The question was, Whether, by the said act, the tolls of the said navigation are exempt from the payment of the poor's rates. If they are, the order of sessions to be confirmed; but if not, the order to be quashed. The whole Court were of opinion, that tolls *per se* were not rateable (a), but only in connection with some local real property; and that there was no doubt upon the construction of this act of parliament that it had prescribed a special and definite mode of ascertaining the value of these lands which excluded the consideration of tolls.—Order confirmed.

7. *Mitchell, Clerk, against Fordham, H. T. 7 & 8 G. 4—6 B. & C. 274.*—Replevin for seizing plaintiff's goods and chattels. Avowry by defendant as overseer of the poor of the parish of *Kelshall* in the county of *Hertford*, stating that the rector of the said parish before the passing of an act of parliament hereinafter mentioned, was entitled to certain great and small tithes arising, &c. in that parish. That by an act of parliament passed in the 35 G. 3. for inclosing lands in the parish of *Kelshall*, it was enacted, that a certain yearly corn rent, *free from all taxes and other deductions whatsoever, except the land tax*, should be issuing and payable from and out of the lands and grounds thereby intended to be divided and allotted, and the old inclosures, (except as therein excepted) and should be payable by the respective proprietors of the said lands and grounds in the proportions and at the times and place in the act mentioned; which said yearly rent should be in lieu and satisfaction of and full compensation for all the great and small tithes, moduses, compositions, and other dues and payments whatsoever due or payable to the rector of the said rectory for the time being. Averment that

By an inclosure act, it was provided, that a certain corn rent, "free from all taxes and deductions whatsoever, except land-tax," should be issuing out of the lands to be enclosed, and other lands in the parish, and be paid to the rector in lieu of all great and small tithes, &c. Held, that this corn-rent was not liable to be assessed to the relief of the poor.

¶ (a) *Rex v. Nicholson*, 12 East, 330. 1 Bott, pl. 102. *Williams v. Jones*, 12 East, 346. 1 Bott, pl. 103.

the plaintiff was assessed to the poor in the sum of 12*l.* in respect of the corn rent by him received in lieu of tithes, and because that sum remained unpaid, defendant, as overseer of the poor of *Kelshall*, distrained plaintiff's goods. Demurer and joinder.—ABBOTT C. J. Inasmuch as tithes are liable to a contributory payment for the support of the poor, there can be no doubt that if, by an act of parliament, a money payment is substituted for tithes, and no express exemption given, it will be liable to the same burthen as the tithes themselves. But where a bargain is made, as in the case of inclosures, the amount payable to the rector will vary according to the existence or non-existence of any agreement as to exemption from taxes and other burthens. The words of this act of parliament, as set out in the avowry, are, that "the rent shall be paid free from "all taxes and other deductions whatsoever, except the land-tax;" and the question turns upon the meaning of the words, "all taxes "and other deductions." The rector says they include payments made for the support of the poor. The parish say that the word *taxes* does not mean *rates*. It has been already determined, that "parochial tax" meant "poor rate." But is there any thing absurd in speaking of "poor's tax," instead of "poor's rate." I take the former expression to be equally appropriate; it means a sum raised by division upon many, and the very expression used in the 43 *Eliz.* is, that "a fund shall be raised by taxation." If the money is raised by taxation it is a tax. I am therefore of opinion that the exemption applies to this burthen; and indeed it would be difficult to find any other burthen from which the rector would be exempted by the words of the act of parliament.—Judgment for the plaintiff.

The owner and occupier of coal mines is rateable to the poor at the sum for which the mine would let, subject to outgoings.

The lessee of coal mines is rateable for the amount of royalty or rent which he pays, and in neither case is any allowance to be made for money expended in rendering the mines productive.

8. *Rex v. Attwood, and Others*, *H. T. 7 & 8 G. 4—6 B. & C. 277.*—On the 29th day of *March* 1825, the churchwardens and overseers of the parish of *Rowley Regis*, in the county of *Stafford*, made a rate for the relief of the poor, in which the above *John Attwood* was assessed as owner and occupier, and *Thomas Devey Wightwick*, *John Jones* and *Joseph Fereday*, and *Josiah Parkes*, were assessed as lessees and occupiers of certain coal mines then at work. Upon an appeal to the *Midsummer* general quarter sessions for the county of *Stafford*, the rate was confirmed, subject to the opinion of this Court upon the following case:—The appellant, *John Attwood*, was the proprietor and occupier of the coal mine upon which the above rate upon him was made (which mine is situate in the parish of *Rowley Regis*, in the county of *Stafford*), and had expended upwards of 10,000*l.* in planting the mine and setting it to work. The mine had been at work one year and a quarter. The value of the whole of the coals which had then been raised from the mine did not exceed 5,000*l.* The full value of the annual produce of the mine in question, after deducting the current expences of working the same, amounted to the sum of 428*l.* 9*s.* Upon that amount the appellant was rated. The appellant, *T. D. Wightwick*, had been for five months prior to the said 29th day of *March* 1825, lessee of the coal mine upon which the rate upon him was made, and which is situate in the said parish of *Rowley Regis*; and during the five months that he had been lessee he had paid 785*l.* 14*s.* in royalties for coals raised; he had also expended in the purchase of the lease and setting the mines to work, 5,020*l.* During the five months that he had occupied the mine, he had raised coals

to the amount of 3,825*l.* 2*s.* 8*d.* The appellant, *T. D. Wightwick*, was rated upon the sum paid for royalties, the sum of 785*l.* 14*s.* being considered by the respondents as the annual value of the royalties paid by him. The appellants, *John Jones* and *Joseph Fereday*, were the lessees of the coal mines, upon which the rate upon them was made, and which are situate in the said parish of *Rowley Regis*. Sir *Horace St. Paul*, the owner and lessor of the mines, sunk the pits and made preparations requisite for working the mines, and then let them to the appellants, Messrs. *Jones* and *Fereday*, at a certain fixed royalty, not a specific proportion of the amount of sales: 492*l.* 12*s.* 8½*d.* was the amount of royalties paid to the lessor during the last year. The lessees had expended 600*l.* in permanent erections on these mines. The appellants, Messrs. *Jones* and *Fereday*, were rated upon the supposed amount of the annual sums paid for royalties. The appellant, *Josiah Parkes*, had been eight years lessee of the mine upon which the rate upon him was made, and which is situate in the said parish of *Rowley Regis*, and had expended 2,500*l.* in planting the mine and setting it to work. During the last year he had raised coals to the value of 2,500*l.*, and during that period had paid 585*l.* in royalties, and was rated upon the supposed amount of the annual sums paid for royalties. The questions for the consideration of the Court are, first, whether under all the circumstances of this case Mr. *Attwood* was properly rated at the sum of 438*l.* 9*s.* in respect of the said coal mine, such sum being the full value of the annual produce of the mine after deducting the current expences of working the same? and, secondly, whether the said *T. D. Wightwick*, *John Jones* and *Joseph Fereday*, and *Josiah Parkes* were rateable in respect of their occupation of the said coal mines to the full amount of the sums paid for royalties upon the coals raised from such mines?—ABBOTT C. J. We are all of opinion that the owner and occupier of a coal mine should be rated at such sum as it would let for, and no more. As to the other points, the first was, that the rate should not be imposed upon the coal produced, because that was part of the realty. It is the first time that such a proposition has ever been submitted, although many coal mines in various parts of the country have constantly been rated, and the argument in support of it is wholly untenable. The legislature has expressly made coal mines rateable, and they must be rated for what they produce, viz. the coals. Slate quarries and brick earth are also exhausted in a few years, but nevertheless the rate is always imposed upon that which is produced. The other argument was, that the rate could not be imposed until the expence of planting the mine had been recouped. But I cannot discover any distinction between expences incurred in bringing a mine to a productive state and in building a house. The attempt to distinguish them is perfectly novel, and if a house is to be rated as soon as built and occupied, it must follow that a coal mine is rateable as soon as it is set at work and produces coals, although it may happen that the expence of sinking it may never be recovered. If the tenant of a mine expends money in making it more productive, that is the same as expending money in improving a farm, or a house, in which cases the tenant is rateable for the improved value. Order of sessions amended as to the rate upon *Attwood*, and confirmed as to the residue of the rate.

By a canal act, it was provided that *lands*, whether covered with water or not, and also all dwelling-houses, wharfs, &c. belonging to the company, should be rateable to the maintenance of the poor in the several parishes where they were respectively situated; the lands according to their quantity and quality, and the dwelling-houses, wharfs, &c. according to the nature and respective uses thereof, and should be assessed in like manner as lands of a like quality, and dwelling-houses, wharfs, &c. of a like and similar size or nature in the respective parishes where the same should be situate, should be assessed, and that the rates, duties, and other personal property of the Company, liable to be rated to the poor, should be assessed in like manner and in the same proportion as other personal property should be assessed: Held, that land of the Company, used by them for the purpose of the canal, was rateable *quâ* land not in respect of its improved value, but in respect of that which would have been its value if it had not been used for the purposes of the canal.

The Company had, on the margin of a large basin, a piece of land adjoining the private yard of a timber merchant. This piece of land next the basin consisted of natural ground; it was not faced with brick or timber, and the ground below the water gradually sloped down to the bottom of the basin. The timber-merchant landed his timber upon this piece of land, and it was there marked and measured by the revenue officers. No acknowledgment or rent was paid to the Company for this privilege of landing the goods there, but their rates and duties were increased, a greater number of ships entering the basin in consequence of this privilege: Held, that this piece of land was not a wharf within the meaning of the act of parliament, and was not liable to be rated as such to the relief of the poor.

9. *Rex v. Regent's Canal Company, E. T. 8 G. 4.—6 B. & C. 720.*—Upon an appeal by the defendants against a rate for the relief of the poor of the parish of *Saint Ann, Limehouse*, the sessions confirmed the rate, subject to the opinion of this Court on the following case. In the rate or assessment the appellants stood rated thus:—

No. 1.—Company of Proprietors of *Regent's Canal*, for wharfs and banks adjoining the basin leading to the *Regent's Canal*, themselves - - - - - £130

No. 2.—Ditto for land covered with water, comprising the part of the basin within the respondent's parish, ditto - - - - - £150

No. 3.—Ditto for land covered with water, comprising that part of the *Regent's Canal*, and the towing-path and banks within the respondent's parish, themselves - - - - - £150

No. 4.—Ditto for one double lock in *Limehouse Fields*, and for one other double lock leading from the basin to the canal in the respondents' parish, ditto for each lock - - - - - £25

The rate was duly allowed and published, and was in all respects correct in point of form. By the 52 G. 3. c. 195, s. 101, it was provided, "that lands, whether covered with water or not, and also "all dwelling-houses, wharfs, warehouses, lock-houses, and other "houses of and belonging to the company should be rateable and "chargeable to the maintenance of the poor, and to all other parochial rates and taxes in the several parishes and places where they "were respectively situated, the lands, according to their quantity "and quality, and the dwelling-houses, wharfs, warehouses, lock-houses, and other houses, according to the nature and respective "uses, dimensions, and descriptions thereof, and should be charged "and assessed in like manner as lands of a like quality, and dwelling-houses, wharfs, warehouses, lock-houses, and other houses of "a like and similar size, nature, dimension, or description, in the "respective parishes where the same should be situate, were or should "be assessed or charged; and that the rates, duties, and other personal property of the company liable to be rated to the poor, or "other parochial taxes in any such parishes or places, should be "rated and assessed in like manner and in the same proportion as "other personal property rateable in the said parishes and places "respectively should be rated and assessed, and according to the "length of the line of the said navigation in such respective parishes "and places, and not otherwise or in any other manner, provided "that, before such personal property should be rated, fourteen days' "notice should be given in writing to, or left at the dwelling-house "of the treasurer or clerk, or any other officer of the company residing in the parish or place where such rate should be intended

held, that land of the Company, used by them for the purpose of the canal, was rateable *quâ* land not in respect of its improved value, but in respect of that which would have been its value if it had not been used for the purposes of the canal.

The Company had, on the margin of a large basin, a piece of land adjoining the private yard of a timber merchant. This piece of land next the basin consisted of natural ground; it was not faced with brick or timber, and the ground below the water gradually sloped down to the bottom of the basin. The timber-merchant landed his timber upon this piece of land, and it was there marked and measured by the revenue officers. No acknowledgment or rent was paid to the Company for this privilege of landing the goods there, but their rates and duties were increased, a greater number of ships entering the basin in consequence of this privilege: Held, that this piece of land was not a wharf within the meaning of the act of parliament, and was not liable to be rated as such to the relief of the poor.

“ to be made, by the respective overseer of the poor, of the intention “ so to do.” As to No. 1, the facts were as follow : The land rated was the margin of a large basin or dock belonging to the appellants. This basin communicates on the one hand with the *Thames*, by means of a lock capable of admitting ships of a large burthen ; and on the other hand with the *Regent's* canal, by means of a double lock of only sufficient size to admit the barges used in the internal navigation. On the east, and on part of the south and north sides of this basin is a narrow slip of land, the property of the appellants, and containing altogether one acre, two roods, and fourteen perches, situated in the respondents' parish. Over this land on the south and east sides, there was originally made a towing-path for barges proceeding between the canal and the *Thames*. This is still occasionally used in times of frost, but at all other times the barges cross the basin diagonally and have no occasion for it. At the end next the double lock it is terminated by a fence and gate, which is kept locked by the defendants, and is only opened by their servants, who keep the key of the gate for persons having navigation business, who are always freely admitted, and use the towing-path as a foot-path on those occasions. Next adjoining the slip of land on the east side of the basin are situate the bonding yard for timber of Messrs. *Richardson*, and the private yards of Messrs. *Richardson* and of Messrs. *Watkins* and *Fry*. The vessels bringing cargoes from foreign parts and other places to these yards take their births along the east side of the basin, and unload their timber and other goods, by means of stages belonging to such ships, on the slip of land of the defendants rated as a wharf, the upper edge of the slip of land next the basin consisting of the natural ground, and not being faced with brick, stone, or timber, and the ground below the water gradually sloping down to the bottom of the basin. The timber is measured and marked on this slip of land by the officers of the revenue, and is, after that, with the other goods, conveyed either into the bonding yard, or on payment of the duties, into the private premises of the above persons. For this privilege of landing their goods, neither Messrs. *Richardson* nor Messrs. *Watkins* and *Fry* pay any acknowledgment or rent to the defendants ; they only pay, as all other persons do, the rates and duties imposed in respect of the tonnage of the ships entering the basin, but the number of the ships coming into the basin of the defendants is greatly increased by reason of the establishment of Messrs. *Richardson's* premises as a bonding yard, and the access thereto from the basin ; and there has been, in consequence thereof, a considerable increase in the tonnage rates and duties paid on such ships to the company since the bonding yard has been established. No other persons are allowed to land their goods there, nor is there any crane or convenience for landing goods. In another part of the basin, situate in *Ratcliff* hamlet, there are cranes and wharfs regularly built, where the defendants, in addition to the tonnage rates, charge both for the crane and wharfage of all goods there landed. Neither the south nor the north side of the basin within the respondents' parish was used for landing goods. If the land on the east side of the basin be to be considered as a wharf, of which the defendants were the occupiers, its annual value, together with the value of the land on the north and south sides of the basin, was 130*l.* as stated in the rate. The annua

value of the land within the respondents's parish, on the east, south, and north sides, if assessed as land of a like quality, was only 8*l*. As to Nos. 2, 3, and 4, the facts were as follow :—the basin, canal, towing-path, and locks, if liable to be assessed in respect of the profit arising to the defendants from the rates and duties received by them, were of the value stated in the rate; and they were also of the value stated in the rate, if the defendants were liable to be rated for the rent at which the basin, canal, towing-path, and locks, would let to any other company similarly situated as the appellants, but their value, if liable to be rated as land of a like quality within the parish, was only the sum of 34*l*. No personal property was rated in the parish at all, nor were there any rates due specially for passing either of the two double locks rated, but only for passing for certain distances along the canal. There were no other profits derived to the defendants from those premises, except the rates and duties imposed by the *Regent's Canal* act. The questions for the opinion of this Court were; first, as to that part of the rate or assessment, marked No. 1., whether, under the circumstances stated relating thereto, the land on the east side of the basin ought to be rated as a wharf? And if it ought not to be so rated, then the sessions were of opinion that the rate ought to be amended by reducing the sum of 130*l*. to the sum of 8*l*.; and, second, as to that part of the rate or assessment marked Nos. 2, 3, and 4, whether, under the 101st clause of the act of the 52 G. 3, c. 195, the basin, canal, towing-paths, and locks, are liable to be rated merely as land of a like quality within the parish? And if so, the sessions were of opinion that the rate ought further to be amended by substituting the sum of 34*l*. for the sum of 350*l*.—BAYLEY J. It seems to me that the rate in this case ought to be reduced. I think that the property comprised in No. 1. is rateable, not as a wharf, but as land; and that the property comprised in Nos. 2, 3, and 4. is rateable as land, but not for the value it has acquired from being used for the purposes of the canal. The statute 52 G. 3. c. 195. states that the making of the *Regent's Canal* will be of great public utility. Now that is a key to enable us to construe the act of parliament. If the canal had not been made, and the land had remained in its original state, it would have been rateable in the same proportion as other land in the parish. On the other hand, if there had been no express provision in the act of parliament regulating the mode in which the land taken for the purpose of the canal was to be rated, it would be rateable, not in proportion to its value when so taken, but in proportion to the value which it has acquired from being used for the purposes of the canal. But the making of a canal being a work of great public utility, and attended with great expence, it is perfectly just to relieve the undertakers of it from a burden which will attach to them only by reason of the improvements they make, at a very heavy expence, in the property used by them for their canal. It is not unusual, therefore, to insert in canal acts clauses to exonerate the undertakers from contributing a larger sum to the maintenance of the poor in respect of the land used by them for the purposes of their canal than would have been contributed in respect of that same land if it had not been so used. It seems to me that the 101st section of the 52 G. 3, c. 195. was intended to have that effect. It enacts, “ that
“ lands, whether covered with water or not, shall be rateable to the

"maintenance of the poor, according to their quantity and quality." The subsequent words clearly explain what was intended by the word *land*. It goes on: "And the dwelling-houses, wharfs, warehouses, lock-houses, and other houses, according to the nature and respective uses, dimensions, and descriptions thereof; and shall be charged and assessed in like manner as lands of a like quality, and dwelling-houses, wharfs, warehouses, lock-houses, and other houses of a like and similar size, nature, dimension, or description are assessed or charged." The act having in the first instance provided for the rating of land, whether covered with water or not, and for buildings, then introduces a different subject of rateability; and that is to be rated only on condition that certain other property is rated. It enacts that the rates, duties, and other personal property of the company liable to be rated to the poor in any such parishes or places, shall be rated and assessed in like manner and in the same proportion as other personal property rateable in the said parishes and places respectively shall be rated and assessed. The introduction of the word *other* shews clearly that the rates and duties were contemplated by the legislature as a species of personal property, for there follows a provision that, before *such* property shall be rated, fourteen days' notice in writing shall be given to the treasurer of the company. There are, therefore, three distinct species of property which are the subject of rate: first, lands, whether covered with water or not; secondly, houses and buildings; and, thirdly, rates and duties. The first two are rateable at all events; the latter only on condition that personal property is also rated. Now the property described in Nos. 2, 3, and 4. comprises nothing but land, part of which was covered with water. I think that that land is to be rated in the same manner as land of the same quality would have been if it had not been converted into a basin, or applied to the other purposes of the canal. If it had been intended that it should be rated according to its improved value, the legislature would have said so. Indeed if that be the effect of the clause, it is wholly useless, as far as the land is concerned, for that would be rateable for its improved value if the act had not contained a provision on the subject. Then the remaining question is, whether the property intended to be comprised in No. 1. can be properly rated as a wharf. The word *wharf* is classed in the act with several other things of an artificial description, and which require expence in their erection. The words are "dwelling-houses, wharfs, lock-houses, and other houses." This piece of land, at all events, is not a wharf in the construction of which any expence has been incurred. The term *wharf*, in its ordinary sense, imports a place built or constructed for the purpose of loading or unloading goods. It is used in that sense in the several clauses of the act which have been referred to in argument. Then, considering the different clauses together, and that the word wharf usually signifies something built or constructed, it seems to me that this is not a wharf within the meaning of the act, but at most only a landing place. Upon the whole, therefore, I think that the rate ought to be amended, by inserting the sum of 8*l.* instead of 130*l.*, in respect of that part of the rate marked No. 1.; and by inserting 34*l.* instead of 350*l.*, in respect of that part of the rate marked Nos. 2, 3, and 4.

—*HOLROYD J.* I am entirely of the same opinion. If the con-

struction contended for were to prevail, the consequence would be, that the canal company would be rateable for the land occupied by their canal in the same manner as they would have been if the act had contained no special clause; that would make the clause wholly useless. I also think, that the piece of land comprised in No. 1. is not a wharf within the meaning of this act of parliament.—

LITLEDALE J. I am of the same opinion. The piece of land comprised in No. 1. is not a wharf. That term usually denotes something built or constructed by the art and industry of man; and though it may have been used for some of the purposes for which a wharf is used, it does not therefore follow that it is a wharf. Goods may be, and frequently are, landed upon the sea-beach, but the beach is not therefore a wharf. If this were a wharf it might fairly be expected, that wharfage dues would be payable; but no compensation whatever is paid to the proprietors of the canal for the use of the piece of land specifically, though they do receive wharfage dues for the use of other premises. As this piece of land is not a building constructed by the art of man, and as no wharfage or compensation is paid to the owners for the use of it as a landing-place, I am of opinion that it is not a wharf, within the meaning of this act of parliament. As to the property comprised in Nos. 2, 3, and 4, I think that it ought to be rated as mere land. The company take up a great quantity of land for the purposes of their canal, and they incur great expence in the making of it. In the act of parliament authorising them to make the canal, a distinction is made between lands and houses, and the rates and duties, as the subject of rateability to the poor. The lands and houses are to be rated as lands and houses of the same description; but the rates and duties, which are the profits arising from the particular use of the land, are to be rated only in case other personal property is rated; but if the land is to be rated *quà* land, according to the value which it has acquired, in consequence of the purpose to which it has been applied by the company, and which value arises from the canal duties, then if other personal property in the parish were to be rated also, it would follow that the company would be liable to be rated twice over for the same property, once for the land in respect of its improved value, and a second time for the canal rates and duties. That cannot have been intended. The rate must, therefore, be amended. Rate amended, by reducing the sum of 130*l.* to the sum of 8*l.*, in respect of No. 1., and by reducing the sum of 350*l.* (the aggregate of the several sums mentioned in Nos. 2, 3, and 4.) to the sum of 34*l.*

Where only one of several partners was resident in a parish: Held, that he could not be rated to the relief of the poor in respect of more than his share of the partnership personal property.

10. *Rex v. Goose*, T. T. 8 G. 4.—7 B. & C. 60.—Upon an appeal against a poor rate made for the parish of *St. James*, in *Poole*, the sessions confirmed the rate, subject to the opinion of this Court upon a case which stated that *Goose* and two other persons carried on business in partnership in the parish of *St. James*, in *Poole*. *Goose* was the only partner resident in the parish, and he was rated in respect of the whole of the partnership personal property, in which he and his co-partners were equally interested, and not in respect of his third share only.—LORD TENDERDEN C. J. It is clear that this rate must be amended. By the statute 43 Eliz. c. 2., *inhabitants are to be rated according to their ability*. If this rate were to stand, *Goose* would be rated according to the ability of himself and others.

It is said that there will be difficulty in ascertaining the share to which any partner may be entitled; but where that is the case the rate may easily be imposed in respect of the whole, and the party may come and discharge himself by proving the extent of his interest.—Rule absolute for amending the rate.

11. *Rez v. Liverpool*, T. T. 8 G. 4—7 B. & C. 61.—By a rate for the relief of the poor of the parish of *Liverpool*, in the county of *Lancaster*, made 21st July 1825, and duly published and allowed, the trustees of the docks and harbour of *Liverpool* were assessed in the sum of 50,953*l.*, in respect of the annual value and profits of the dock estates within the said parish, vested in them as trustees of the said docks and harbours, according to the following schedule:

On the dock duties	-	-	-	£50,000
On three cranes at the new wall and the parade slip	-	-	-	40
Engine-house, <i>Bridge Street</i>	-	-	-	17
Office, <i>Salthouse dock</i>	-	-	-	8
Ditto <i>King's dock</i>	-	-	-	26
On office, <i>Queen's dock</i>	-	-	-	26
Ditto <i>Bridge Street</i>	-	-	-	54
Ditto <i>Old dock</i>	-	-	-	270
Ditto <i>Goree</i>	-	-	-	11
Ditto yard, &c. <i>Trektham Street</i>	-	-	-	185
Ditto - - - Ditto	-	-	-	315

Against this assessment the trustees appealed to the Court of Quarter Sessions of the borough of *Liverpool*, upon the ground that the dock estates within the said parish are not rateable to the poor thereof. The Court being of opinion that the trustees were not rateable, amended the rate, by striking out the foregoing assessment, subject to the opinion of this Court upon the following case. The dock estates within the parish of *Liverpool* are vested in the mayor, aldermen, bailiffs, and common council of *Liverpool*, as trustees of the docks and harbour of *Liverpool*, by virtue of several acts of parliament (viz. 8 Anne, c. 12., 3 G. 1. and 11 G. 2. c. 32., 2 G. 3. c. 86., 25 G. 3. c. 15., 39 G. 3. c. 59., and 51 G. 3. c. 143., all of which, excepting the second, are public acts,) and consist of a large quantity of land, to the extent of 100 acres. Part of those estates was granted voluntarily by the corporation of *Liverpool*, part was sold by that body to the trustees for a pecuniary consideration, and other parts have been purchased by the trustees from private individuals, according to the powers given to them by the said acts. Before the construction of the present works part of the land was waste, both above and below high-water mark, but other parts consisted of lands and buildings in the occupation of individuals rated to the relief of the poor of the said parish. The dock estates at present consist of several wet docks, in which vessels may be constantly afloat, dry basins, that is to say, dry at low water, wharfs, piers, slips, cranes, weighing machines, offices, and yards for storing goods, and other conveniences requisite to form a complete dock; and the trustees are authorized to receive large sums, under the name of dock rates and duties, for the accommodation of vessels in the said docks, by virtue of the said acts of parliament. The trustees manage the dock estates by their servants and agents, who receive and account to them for the dues and profits arising as aforesaid, and no part of the estates and premises above assessed is let off

Where, by act of parliament, certain persons were empowered to make a dock, and take certain rates and duties from ships resorting to it, and the same statute provided that those rates should be applied to paying off the debt incurred in making the dock, and to keeping it in repair, and that then the rates should be lowered, reserving sufficient to keep the dock, &c. in repair: Held, that the Dock Company were not rateable to the relief of the poor in respect of the dock dues received by them, nor of the premises purchased or hired, and used by them for the purposes of the dock, no individual having any beneficial occupation of those premises.

to other persons. With regard to the application of the monies received as dock duties, it is enacted, by the 8 *Anne*, c. 12. s. 9., above referred to, under which the first dock was built, "that all "and every such sum and sums of money that shall be raised and "received by the duties aforesaid, after payment of the expenses of "collection, shall be, by the trustees for the time being, applied "and disposed of to the building and repairing the said new dock or "basin, and other works, and for the securing, preserving, and "maintaining the said dock or basin and harbour of *Liverpool*, and "to no other use and purpose whatsoever." By the same section the collector of the dock duties is required to keep accurate accounts of all his receipts and disbursements. By the fifteenth section of the same act nine commissioners are appointed for the inspection of the accounts, which commissioners "shall and may order and "appoint all such monies which shall rest due upon such account "to be laid out and expended to and for the uses and purposes in "the act mentioned, and to and for no other use whatsoever." By the fourth section of the 11 *G. 2.* c. 32., passed for building another dock, it is enacted, "that there shall be twelve commissioners to "inspect, audit, and adjust the account of all the collectors' receipts "and disbursements of all the monies collected and levied by virtue "of the former act and that act, who shall be invested with such "and the same powers and authorities in all respects, and to all "intents, constructions, and purposes, as were given to and vested "in the commissioners appointed in pursuance of the former acts, or "either of them." By the 51 *G. 3.* c. 143. s. 125., the mode of appointing the commissioners is altered, but the electors are authorised to appoint them as commissioners, for the purposes in this and the former acts mentioned. By the 11 *G. 2.* c. 32. s. 8., all the collectors of dock duties are required to keep regular accounts of their receipts and disbursements, and to produce the same to the commissioners when ordered; and by the ninth section of the same act, the treasurer of the dock duties is required to print his account yearly, the expense of such printing to be deducted out of the dock duties, and to deliver a copy to any such person paying dock duties as shall require the same. All the dock rates payable by the former acts of parliament were repealed by the 51 *G. 3.* c. 143., which imposed the present duties. The twenty-seventh section of that act, which relates to the application of the present dock duties, is as follows: "And be it further enacted, that all monies which shall "be collected, received, levied, borrowed, and raised by and under "this act, shall be applied in paying and defraying the charges and "expenses attending the obtaining and passing this present act, and "to the paying the expenses and charges attending the levying and "collecting the said rates and duties; and after the paying and appropriating one third part of the said monies, to and for the purpose "of making and completing the southernmost of the north docks as "hereinafter is mentioned, then to the paying off and discharging the "present bond debt of 114,705*l.* 19*s.* 4*d.*, and the debt of 67,406*l.* 1*£s.* 7*d.* owing by the trustees to the corporation of *Liverpool*, for "the purchase of land and strand intended for the site of the southernmost of the two northern docks, and any future bond debt, and the "interest on the same, and to the paying and discharging the interest "on all other monies which may be hereafter borrowed and taken up

" at interest under the provisions of this act upon the credit of the
 " dock rates and duties as aforesaid, and to the carrying into execution
 " the purposes of this act and the said recited acts, in the making,
 " erecting, building, finishing, and maintaining such docks, basins,
 " piers, and other works and buildings in the port of *Liverpool*, under
 " the said acts and this act, and to the paying, defraying, and satisfy-
 " ing all other charges and expenses already incurred, or hereafter to
 " be incurred in the carrying into execution, or under or in conse-
 " quence of any of the former acts or this present act ; and the residue
 " or surplus of all monies arising from such rates or duties, which
 " shall remain after such application thereof as aforesaid, shall from
 " time to time be applied in or towards the repayment of the prin-
 " cipal monies which shall have been borrowed under this act, until
 " all such principal monies shall be repaid, and all assignments of
 " or mortgages upon such rates and duties are paid off, satisfied,
 " discharged, and redeemed ; and when, by the means last mentioned,
 " all the principal monies which shall have been borrowed shall be
 " repaid, and all assignments and mortgages upon the said rates are
 " satisfied and redeemed, then and in such case it shall be lawful
 " for the trustees, and they are hereby required to lower and reduce
 " the rates and duties hereby granted and made payable as far as
 " the same can be done in the then state of the docks, basins, build-
 " ings, and other works and buildings of the said port, and leaving
 " sufficient for all charges of management and collection of rates
 " and other concerns of the said docks, basins, piers, works, and
 " other buildings, and improving, repairing, and maintaining the
 " same, and for carrying into execution the provisions of the former
 " acts and this act." The present duties have been invariably ap-
 " plied by the trustees according to the direction of the last-mentioned
 section, and they derive no private advantage or emolument what-
 soever from the execution of the trusts of the dock estates. The
 three cranes mentioned in the schedule were erected by the trustees
 out of the dock funds, in pursuance of the power given them by the
 78th section of the 51 G. 3. c. 143., before referred to. For the
 use of these cranes in landing and discharging cargoes, the trust-
 ees charge a certain sum, which goes to the general dock estate
 in the same way as the dock duties, and is applied as the
 general dock funds are and must be applied by the various acts
 of parliament, and the trustees derive no individual benefit from
 them. The engine-house is used for the purpose of keeping
 a fire-engine, which the trustees have provided out of the public
 funds, for the security of the shipping, as empowered by the same
 section, and no rent is charged to or paid by any one for the same.
 Of the different offices enumerated in the schedule some are for the
 accommodation of the dock masters and gate-men at the various
 docks, as places of shelter, and merely for the dispatch of public
 business ; others are occupied by the collector of the dock rates, the
 harbour-master, and other public officers of the trustees, solely for
 the purposes of the dock business. No rent is charged to them for
 the use of these offices, and no part of them is occupied as a resi-
 dence by any one. The two yards mentioned in the schedule are
 hired by the trustees at an annual rent, as a place necessary for the
 deposit of the various articles used in the erection and maintenance
 of the docks, and from the occupation of which they derive no per-

sonal benefit.—**LORD TENTERDEN C. J.** I am of opinion that the order of sessions must be confirmed. It seems to me that there is no solid ground for the distinction which has been taken as to those parts of the property rated which are rented by the dock company, for if there be no beneficial occupation it can make no difference whether the occupier be the owner or not. As to the main question, the case of *Rex v. The Commissioners of Salters-load-sluiice*(a) is decisive. There the tolls were by act of parliament directed to be applied “to the purposes of the act, and to and for no other use or purpose whatsoever.” The statute under which the dock rates in question are levied does not indeed contain an express direction that the rates shall be applied to the purposes specified, and no other; but it directs that certain burdens shall be discharged, and that then the rates shall be lowered; and, therefore, any application of those rates to other purposes not specified, would be a direct violation of the statute. Nothing of that kind is suggested, and, therefore, there is not in reality any difference between this case and the former. The principle of not rating property of which no person has a beneficial occupation is not confined to canals or docks, or property of that nature. A Quaker’s meeting-house, if the pews are not let, is not rateable, as was decided in *Rex v. Woodward*(b), and the same would be applicable to a chapel with the rites of the church of *England*, or to a dissenting meeting-house. On the other hand, it was held in *Rex v. Agar*, that where the pews of such a meeting-house were let, the trustees were rateable in respect of the rents, although not received to their own use, but for the benefit of the minister. Here the trustees were not occupiers in the ordinary sense of the word, and no profit was received for the use of any person. It is said that the docks were made by the corporation of *Liverpool*, in order to improve their private property; if such an effect is produced, that property will be rateable for the improved value.—**BAYLEY and LITTLEDALE Js.** concurred.—Order of sessions confirmed.

Where the surplus tolls of a navigation were directed by act of parliament to be expended in repairing public bridges and highways: Held, that they were not rateable to the relief of the poor.

12. *Rex v. The Trustees of the River Weaver Navigation, T. T. 8 G. 4.—7 B. & C. 70.*—Upon an appeal against a rate made by the overseers of the poor of the township of *Moulton*, in the county of *Chester*, upon the trustees of the river *Weaver* navigation, the sessions confirmed the rate, subject to the opinion of this Court on the following case:—By an act of parliament passed 7 G. 1., entitled “An act for making the River *Weaver* navigable from *Frodsham* “*Bridge to Winsford Bridge* in the county of *Chester*,” it was enacted, “That from and after the said work shall be finished, and “all the charges thereof, &c. fully paid, that then the clear produce “of the rates and duties shall, from time to time, be employed for “and towards amending and repairing the public bridges within the “county of *Chester*, and such other public charges upon the county, “and in such manner as the justices of the peace at the *Michaelmas* “quarter sessions shall yearly order, direct, and appoint.” And after reciting that the roads leading to the river would be much injured by the increased traffic upon them, it was also provided, that so much of the rates as the justices might think fit should be expended in repairing those roads, and that if any surplus remained,

(a) 4 T. R. 730. 1 Bott, pl. 198.

(b) 5 T. R. 79. 1 Bott, pl. 200.

it should be expended in repairing such other highways in the county as the justices in sessions should appoint. By the 33 G. 2. further provisions as to the navigation were made, but it directed that the surplus duties, after payment of the expenses of the navigation, should be applied to such public purposes as before mentioned. The tonnage rates and duties upon the *Weaver* are not charged by the mile, but 1s. per ton is charged upon the whole line of river; and a vessel navigating the whole or any part of the length of the said navigation is subject to the same charge. This tonnage is paid quarterly at the river *Weaver* navigation office in *Northwich*, which is a distinct township from *Moulton*. The annual accounts up to the 5th of *April* in each year are regularly audited by the clerk of the peace, and filed at the *Michaelmas* quarter sessions, when the balance arising from the rates and duties in the hands of the treasurer, over and above the necessary charges and expenses for the maintenance and support of the navigation, is directed by the magistrates there assembled to be paid, and the same is invariably paid to the county treasurer, to be applied for the general purposes of the county, according to the acts of parliament, and to none others. The township of *Moulton* rated the trustees as follows:—

OCCUPIERS.	PROPERTY RATED.	RENTAL.	SUM ASSESSED.
The trustees of the river <i>Weaver</i> navigation.	Lands used for the river <i>Weaver</i> , with the tolls, dues, and duties arising therefrom, or in respect thereof, within the township of <i>Moulton</i> .	<p>£. s. d.</p> <p>234 13 4</p>	<p>£. s. d.</p> <p>35 4 0</p>

The amount at which the trustees are assessed in the said rate, provided they are rateable at all, is correct. — BAYLEY, J. We think, that, as there is not any clause in the statutes set out which vests the soil of the river *Weaver* in the trustees, they cannot be rateable to the relief of the poor in respect of the tolls. It was then suggested that the trustees were rated in several parishes through which the river *Weaver* runs, and that in some of them they might be considered as the occupiers of land, it was therefore important to have the opinion of the Court as to their liability to be rated under such circumstances. Upon this point, the Court deferred their judgment until the case of *Rex v. The Inhabitants of Liverpool* had been decided; and then BAYLEY J. said, the principle of this decision is applicable to the case of *Rex v. The Trustees of the River Weaver Navigation*. There the surplus tolls remaining over and above the expenses of supporting the navigation, were to be applied to the repairing and maintaining of bridges and highways. Those were public purposes; and as no part of the monies received could be applied to private purposes, those monies were not rateable in the hands of the trustees. The order confirming the rate must therefore be quashed upon this ground, as well as that which was mentioned by the Court at the time of the argument.—Order of sessions quashed.

13. *Rex v. The Inhabitants of Kingswinford*, T. T. 8 G. 4.— A canal company is rateable to the relief of
 7 B. & C. 236.— Upon appeal by the company of proprietors

the poor in every parish through which the canal passes, in proportion to the profits which the land occupied by them in such parish yields, and therefore when a canal passed through several parishes in which the tonnage dues payable varied, it was held the company were rateable to the relief of the poor of each parish for the amount of tonnage dues actually earned there, and not for a part of the whole amount earned along whole line of the canal in proportion to the length of the canal in that parish.

of the *Dudley Canal Navigation* against a rate made for the relief of the poor of the parish of *Kingswinford* in the county of *Stafford*, whereby the company were rated for their canal reservoirs, path, and tonnage dues, estimated as of the annual value of 604*l.* 2*s.* 2*d.*, at 25*l.* 3*s.* 4*d.*, the sessions reduced the rate to 9*l.* 16*s.* 11*d.*, subject to the opinion of this Court on the following case:—By the 16 G. 3. c. 66, entitled “An act for making and maintaining a navigable canal within and from certain lands in the parish of *Dudley* in the county of *Worcester*, to join and communicate with the *Stourbridge Navigation* in the parish of *Kingswinford*,” it was enacted, that certain proprietors therein named should be united into a company for the better carrying on, making, and maintaining the said canal. By the 25 G. 3. c. 87., entitled “An act for extending the *Dudley Canal* to the *Birmingham Canal*,” it was, amongst other things, enacted, that from and after the making and completing the said intended canal, the shares created by virtue or in pursuance of that act should become consolidated with the shares in the then *Dudley Canal Navigation*, and all distinction between the same should cease and determine, and the *Dudley* canal, and all matters and things relating thereto, and the canal and other works to be made and completed by virtue of that act, should from thenceforth be and become one joint navigation and concern, and the whole of the income and profits arising from such joint navigation and concern should be paid unto and equally divided amongst all and every the proprietors thereof, according to their respective shares therein. By the 33 G. 3. c. 121., which was passed for making and maintaining a navigable canal from the *Dudley Canal* to the *Worcester* and *Birmingham Canal*, it was enacted, “that all subscribers, towards carrying on and completing the intended navigation, should be entitled to and should receive, after the said navigation should be completed, a proportion of the profits arising as well from the intended navigation as from the *Dudley Canal Navigation*, according to their number of shares; and every body politic or corporate, person or persons, having such property in the said undertaking, should respectively be deemed proprietors in the whole concern in proportion to every such part or share which they or he should be possessed of towards carrying on the same,” By section 34. it was further enacted, “that the company of proprietors should from time to time be rated to all parliamentary and parochial taxes, rates, and assessments for and in respect of the lands and grounds taken and used by the said company, and all warehouses and other buildings erected or to be erected by the company of proprietors, in the same proportions as other lands, grounds, and buildings lying near the said canal and collateral cuts were or should be rated.” Neither of the recited acts of the 16, 25, or 30 G. 3. contained any clause respecting the mode in which the company should be assessed either to the parliamentary or parochial taxes. The company were empowered to take different rates of tonnage upon those parts of the canal which were made under each of the said recited acts of the 16, 25, and 33 G. 3. By the 16 G. 3. s. 44., the company were authorized to take certain rates or dues for tonnage therein specified, on goods thereafter to be carried upon any part of the said intended canal, or which should pass through any lock of the said canal. By the 25 G. 3. the company were empow-

ered to take other and different rates of tonnage from those granted by the 16 G. 3., and therein set out, for all goods thereafter to be carried upon the intended canal; and by section 22. to induce the proprietors of the *Birmingham* and *Birmingham and Fazeley* Canal, to agree to the aforesaid junction with that canal at *Tipton Green*, and as a compensation for their probable loss of tonnage, in consequence of the intended canal, they were empowered to take certain rates and dues upon all coals and merchandizes navigated along the intended canal, according to the rates therein set forth. By the 33 G. 3., the company of proprietors were authorized to take various and different rates of tonnage from those mentioned in either of the acts of the 16 and 25 G. 3., and which were there enumerated, for tonnage and wharfrage of goods, &c. to be thereafter carried upon the intended canal and collateral cuts, &c.; and by section 22., the *Worcester and Birmingham* Canal Company were enabled to receive certain rates of tonnage and wharfrage therein mentioned, for such coals and other things which should pass from the intended canal into or upon the *Worcester and Birmingham* Canal, and from the *Worcester and Birmingham* Canal into or upon the intended canal. The land occupied by the company of proprietors in the parish of *Kingswinford*, for the purposes of the canal, is 12 acres, 2 roods, 36 perches, the whole of which was taken under the recited act of the 16 G. 3., and is one twelfth part of the land occupied by the said company of proprietors, for the purposes of the whole of the *Dudley* Canal, made under the recited acts of the 16, 25, and 33 G. 3., and extending through the several parishes of *Kingswinford*, *Dudley*, *Tipton*, *Sedgley*, *Rowley Regis*, *Hales Owen*, and *Northfield*. The account of the tonnage arising upon the whole of the canal made under the said recited acts, and of the expenses and outgoings thereon, is kept as one joint concern and not separately, and the profits of the whole are divided amongst the proprietors generally according to their shares therein. The total amount of tonnage received by the company of proprietors for the last year on the whole of the canal, after deducting the expenses, is 5670*l.* 13*s.* 1*d.*, one-twelfth part of which is 472*l.* 11*s.* 1*d.*, a rate on one half of which sum (236*l.* 5*s.* 6½*d.*) at 10*d.* in the pound is 9*l.* 16*s.* 11*d.*, to which the sessions have reduced the rate. The tonnage received during the same period for goods, &c. carried on that part of the canal, made under the recited act of the 16 G. 3., which is situate in the parish of *Kingswinford*, after deducting expenses, is 1208*l.* 4*s.* 4*d.*, and a rate on the half of that sum (604*l.* 2*s.* 2*d.*) at 10*d.* in the pound is 25*l.* 3*s.* 4*d.*, at which sum the company of proprietors were rated. The only question for the opinion of this Court was, Whether the different parts or extensions of the canal made under the several recited acts of parliament ought to be taken as one joint concern as far as related to the poor rates, or whether that part thereof, made under the 16 G. 3. ought to be rated as a distinct and separate concern?—BAYLEY J. It seems to me that in amending this rate the sessions have not adopted the correct rule. The canal company are to be rated under the statute of the 43rd of *Elizabeth*, as occupiers of land in the parish of *Kingswinford*. Tolls, *eo nomine*, are not rateable; but if the subject matter out of which the tolls arise, be one mentioned in the statute of *Elizabeth* as the object of rate, then that may be rated by name, and the tolls which constitute its profits may be thus made

to contribute to the relief of the poor. A canal company, therefore, is liable to be rated in respect of the land which they occupy in every parish through which the canal passes, and for that value which the land there produces. Where there is a long line of canal extending through different parishes, although the money produced by the tonnage collected in all the parishes, constitute one common fund out of which all the expenses are to be borne, still the proportion which those expenses may bear to the tolls collected, even in cases where the rates are the same along the whole line of the canal, may vary in different parishes. The traffic on the canal may be greater in some parishes than others, or the rates may be unequal, and thus the net profits, which constitute the value of the land used for the canal, may vary in different parishes. There are twelve miles in length of the canal in the parish of *Kingswinford*. Assuming that the different branches of the canal had been made under one act of parliament; I am of opinion that the company ought to be rated in each particular parish in proportion to the profit which they derive from the land there used by them for the purpose of the canal. If a canal runs through six different parishes, and there is the same traffic through the whole line of the canal, every part of the canal will earn an equal proportion of the tolls. But it may happen that in that part of the canal situate in one parish, there may be double or treble the traffic which there is in any other of the six. Why are the other parishes to have any part of the tolls earned in that parish? The land in those parishes contributes nothing towards earning the sum derived in the other parish from the use of the land there. The true principle is this: a canal company is to contribute to the relief of the poor in each parish through which the canal passes in proportion to the profit which they derive from the use of their land in that parish. If the profit arising from a given quantity of land vary in different parishes, the rate must vary in the same proportion. The whole rate will be payable out of one common fund. But then each parish will receive from the company a sum in proportion to what the land in that parish produces. If in this instance this rule has the effect of making the rate in *Kingswinford* higher, it will also make the rate lower in other parishes. For these reasons it appears to me that in this case the sessions have not proceeded on the correct principle, but that they ought to have rated the company for the tonnage received by the company on that part of the canal which is in *Kingswinford*, and that therefore the rate ought to be amended by making it 25*l.* 3*s.* 4*d.* — HOLBOYD and LITLEDALE concurred. — Rate amended.

By a local act for the relief of the poor, certain commissioners were enabled to make rates upon all and every person or persons who held, occupied, or possessed land in the parish: it was held, that a corporation was liable to be rated, although by a clause, giving an appeal to the quarter sessions to any party aggrieved, such party was bound to enter into a recognizance: Held, also, that it was not competent to the defendant in such action to object to the rates on the ground that the property rated was not sufficiently described in them, that being a ground of appeal to the quarter sessions.

The 7 G. 3. c. 37. which enacts, that certain lands to be embanked from the river Thames

15. *Rex v. London Gas Light and Coke Company*, E. T. 9 G. 4. 8 B. & C. 54. — Upon appeal against a rate made for the relief of the poor of the parish of *St. Bride's, London*, the sessions confirmed the rate, subject to the opinion of this Court on the following case: By a certain rate or assessment, being the rate or assessment ap-

pealed against, duly made and allowed by two justices of the peace for the city of *London*, on the 22d of *September*, 1826, on the several inhabitants and others, and every occupier of lands, houses, shops, warehouses, and other tenements or hereditaments within the parish of *St. Bridget*, otherwise *St. Bride*, in the ward of *Farringdon Without*, in the city of *London*, for and towards the relief, maintenance, and employment of the poor of the same parish, from *Midsunmer-day* then last past to *Michaelmas-day* then next ensuing, the said rate being a rate or assessment of 1s. 6d. in the pound upon the annual rent or value of the said lands, houses, shops, warehouses, and other tenements and hereditaments of and in the same parish, as far as the same could be ascertained, the City of *London* Gas Light and Coke Company was rated as follows:—

£1200. The City of *London* Gas Light and Coke Company for houses, sheds, and premises, *Daniel Benham*, secretary, resident - - - - - £90 0 0

£12. The City of *London* Gas Light and Coke Company for houses and premises, *Daniel Benham* - - - - - £0 18 0

£24. The City of *London* Gas Light and Coke Company for houses and premises, *Daniel Benham* - - - - - £1 16 0

The premises for which the company is rated and charged in the said assessment at the sum of 90*l.* upon the annual rental or value of 1200*l.*, consist of a wharf, buildings, and premises abutting on the river *Thames*, near *Blackfriars Bridge*, held by the company under a lease granted by the New River Company, a part of which premises is in the said parish of *St. Bridget*, otherwise *St. Bride*, and liable to be rated thereto at sum of 60*l.* upon the annual rental or value of 800*l.*, and the remaining parts of such buildings, together with the wharf and premises, covering and comprising a space of 22,642 feet, superficial measure, which are assessed in the said rate, upon the annual rental or value of 400*l.*, and which the *London* Gas Light and Coke Company claim to be exempted from the said rate, are built upon ground and soil which were formerly part of the ground and soil of the river *Thames*, and were enclosed and embanked by the New River Company, and became vested in the City of *London* Gas Light and Coke Company as lessees for a term, yet unexpired, of the adjoining wharf and ground in front of which the said ground and soil of the said river were so inclosed and embanked. The inclosure and embankment were made by the New River Company under the act 7 *G. 3. c. 37*, by which (after reciting that it would tend to remove many inconveniences if the ground and soil of the river *Thames* between certain limits, including the land in question, was inclosed and embanked,) it was enacted, that it should and might be lawful for the mayor, aldermen, and commons, in common-council assembled, to inclose and embank the said ground. By the second section, the owners of wharfs abutting on this ground were authorized to inclose that part of it opposite their premises at their own expence, giving certain notices to the town-clerk of the city; and by the 51st section it was enacted, that the ground and soil of the said river so to be inclosed and embanked in the front of every such wharf, should vest in the owner of such adjoining wharf, *free from all taxes and assessments whatsoever*. By the 52d section, certain quit-rents were imposed upon the land so to be inclosed; and a quit-rent, amounting to 23*l.* 1*l.* 8*d.* per an-

shall be "free from all taxes and assessments whatsoever," exempts the occupiers of premises built on those lands from payment of poor-rates in respect of such occupation.

num, payable by virtue of the act for the land in question, was redeemed by the New River Company, in the year 1769, for the sum of 471*l.* 14*s.* 2*d.* An act was passed in the 39 *G.* 3, entitled, "An act for the better relief and employment of the poor of the parish of *St. Bridget*, otherwise *St. Bride, Fleet Street*;" by the 18th section of which the churchwardens and overseers of the poor were required "to make one general equal pound-rate or assessment for and towards the relief of the poor, and other the ends and purposes of the act, upon all and every person and persons who did or should inhabit, hold, occupy, possess, or enjoy any land, house, shop, warehouse, coach-house, stable, cellar, vault, or any other building, tenement, or hereditament within the said parish, and on every other person and persons who by law was, were, or should be chargeable or liable to be assessed for or towards the relief of the poor." In the 7 *G.* 4, an act to amend this act was passed, but the 35th section, relating to the poor-rates, was the same as in the former statute. The New River Company, whilst in possession of the ground and soil for which the exemption is now claimed by the *London Gas Light and Coke Company*, were several years regularly rated to the poor-rate of the parish of *St. Bridget*, otherwise *St. Bride*, in respect of the same, and of the buildings erected thereon, and paid their rates until 1825, when a new and higher assessment having been made, they objected to the rate, and claimed a total exemption. The question for the opinion of this Court was, Whether the said land, comprizing the said space of 22,642 superficial feet, the said wharf and premises, and the said buildings erected thereon, and which are assessed in the said rate upon the annual rental or value of 400*l.*, are liable to be rated to the relief of the poor of the said parish of *St. Bridget*, otherwise *St. Bride*? If the Court should determine that the said last-mentioned wharf and premises, and the said buildings erected thereon, are liable by law to be rated to the relief of the poor of the said parish, the said rate is to be confirmed; but if they should be of opinion that the said last-mentioned premises are not liable to be so rated, the said rate is to be confirmed as to the sum of 60*l.* upon the annual rental or value of 800*l.*, and to be amended by striking out of the said rate the annual rental or value of 1200*l.*, and inserting instead thereof 800*l.*, and by striking out the sum of 90*l.* so assessed as aforesaid, and inserting instead thereof the sum of 60*l.*—Lord TENTERDEN C. J. The question in this case is, Whether certain property built on land embanked in pursuance of the statute 7 *G.* 3. c. 37. is to be exempt from poor-rates? That act contemplated an undertaking likely to be productive of public benefit, and certain inducements were held forth to the city to carry it into execution, and it provided, that the land so embanked should vest in certain persons "free from all taxes and assessments whatsoever," and the question is, Whether by those words the land is exempt from poor-rates? It has already been decided that it is exempt from the land-tax, and I know not upon what principle that decision could proceed, if it be not exempt from poor-rates also. It is said that an aggregate sum was imposed upon the district for land-tax, which was afterwards subdivided amongst the individuals having property there; and that it was immaterial to government how the division was made, provided the whole sum was raised. It was also said, that the act of parliament being in its

nature private must be considered as a bargain between those who were parties to it, and that the city at large might, in expectation of benefit from the embankment, have consented that the land should not bear any part of the land-tax. But that argument is equally applicable to the present case. The poor may be substituted for the government: the whole sum to be raised for them is first calculated; and the amount to be raised remains the same whatever be the property in the district liable to contribute. Again, the embankment might be beneficial in a peculiar manner to the parish as well as to the city at large, and the inhabitants of the parish might, on that account, agree that it should be exempt from poor-rates. If the premises in question were exempt from this burden by the 7 G. 3. c. 37. I think that no alteration has been made by the 39 G. 3. and 7 G. 4.; for the object of those statutes was only to provide a new mode of making and raising assessments for the relief of the poor, and not to bring in any new matter as the subject of assessment which was not so before they passed. They merely enumerate more specially the same descriptions of property that were mentioned more generally in the stat. 43 Eliz. The recent acts were passed *alio intuitu*, and we ought not in justice, as we are not bound by any rule of law, to make them applicable to any new thing. We were then pressed with the case of *Perchard v. Heywood*, where it was held that houses built on this land were liable to house and window tax. But that was a very different case. The object of the tax was to raise as large a sum as possible for the use of the public, and the amount raised would have been lessened had any houses been exempted, whereas the amount raised for land-tax or poor-rate would not; and I think that the decision as to the land-tax ought to guide our judgment on this occasion. One or two very recent cases are analogous to this. In *Chatfield v. Ruston (a)*, where a private inclosure act secured to the vicar of a parish a certain yearly sum of money "free and clear of all rates, taxes, and "deductions whatsoever," it was held that he was not rateable in respect of that sum to the relief of the poor; and in *Mitchell v. Fordham (b)*, it was held that the words "free from all taxes and "deductions whatsoever except land-tax" gave the like exemption from poor-rates. For these reasons I think that the premises in question are exempt from poor-rate, and that the rate must be amended.—BAYLEY J. I am of the same opinion. The cases cited by my Lord Tenterden are in point. Besides, the house and window tax was a new one imposed after the exemption was given; and the exemption may be considered analogous to a covenant to pay taxes which applies to old taxes or others substituted for them, but not to taxes entirely new, unless there are express words to give it such extensive operation.—HOLROYD J. concurred.—Rate to be amended.

15. *Rex v. Trustees of the Duke of Bridgewater, H. T. 9 & 10 G. 4.—9 B & C. 68.*—Upon an appeal against a rate for the relief of the poor of the township of *Preston-on-the-Hill*, in the county of *Chester*, whereby the defendants were rated in the sum of 185*l.* upon the annual rental of 1480*l.*, as occupiers of land taken for the canal, towing-paths, &c. with the profits arising therefrom; and the warehouses, wharfs, clay-shed, stables, offices, gauging-docks, &c. adjacent; the sessions amended the rate, by reducing the amount

The rent is the criterion of the value of the occupation of land; and the proprietors of a canal are rateable for the sum at which it would

(a) 3 B. & C. 863.

(b) 6 B. & C. 274. Ante, pl. 7.

let, and not for
their gross re-
ceipts, minus
their expenses.

of property upon which such rate was made, from the sum of 1480*l.* to 1164*l.* 15*s.* 2*d.*, and confirmed the rate so amended, subject to the opinion of this Court on the following case:—The rate was duly made in point of form. The grounds of appeal were, that the principle upon which the appellants were rated was erroneous, inasmuch as it appeared they were rated in proportion to the full amount of the gross receipts as owners as well as occupiers of the rated property in the respondent township; whereas, it appeared, that the property of other inhabitants, who were occupiers of farms and premises, and who were named in the said rate, and upon whom notices containing the grounds of appeal, had been served, was rated only in proportion to the amount of the respective rents paid by them as occupiers of their farms and premises, whereby the property of the defendants in the said township was greatly over-rated, in proportion to the other property therein; and other grounds of appeal were, that the profits arising from the occupation of farms and farming stock were either improperly omitted to be assessed according to the full value thereof, or were greatly under-rated in proportion to the assessment made upon the tolls and income arising from the property of the defendants; and, lastly, that certain allowances and abatements, other than such allowances as were necessarily made to the defendants in the management of their property, for collection, repairs, and every other attendant expense, were made, as far as regarded the above-mentioned persons and profits, by assessing them on the rent only, which were not made in the case of the defendants. By several acts of parliament passed in the thirty-second and thirty-third years of *George* the Second, and in the third and sixth years of *George* the Third, the late Duke of *Bridgewater* was empowered to make and extend certain canals communicating chiefly between *Manchester*, in the county of *Lancaster*, and the river *Mersey*, at *Runcorn Gap*, in the county of *Chester*; and in consideration of the great charges and expenses to which the duke was necessarily put, these acts authorised him to receive certain tolls upon the tonnage of all coals, goods, &c. &c. which should pass along the canals, but exempting from toll all stones and gravel for any highway, in either of the abovementioned counties, and all manure carried by any persons occupying lands near the said canals. The defendants are the trustees of the late Duke of *Bridgewater*, and do not any of them reside within the respondent township, but are the owners and occupiers of the canal, upon a portion of which, to the extent of one mile and three-sixteenths of a mile, passing in and through the said township, part of the above rate, amounting to 644*l.* 15*s.* 2*d.* for land taken for the canal, towing-paths, &c. with the profits arising therefrom, was made. With respect to the remaining sum of 510*l.* for warehouses, wharfs, clay-shed, stables, offices, gauging-docks, &c. adjacent, there is no question to come before the Court; the defendants derive no profit whatever from their land in the respondent township, except from the tonnage payable to them by virtue of the above-mentioned acts of parliament, but they are carriers on the canal, and receive freight for goods carried in their own vessels through the respondent township, but the tonnage duty upon the goods so carried by the defendants, is included in the above sum of 644*l.* 15*s.* 2*d.* Personal property and profits in trade are not assessed to the relief of the poor in this

township. The occupiers of land and houses in the said township are rated in the present assessment, as in all former assessments, at four-fifths of their respective rents, taking those rents as the criterion of the value of the land. The full amount of the tolls arising to the appellants from the canal and towing-paths in the township, independently of their receipts as carriers for freight, but including the tolls upon the goods so carried by them, is 1272*l.* 4*s.*, from which 466*l.* 5*s.* being deducted for repairs and collection, &c., leaves the sum of 805*l.* 19*s.*, upon four-fifths of which, namely, the sum of 644*l.* 15*s.* 2*d.*, the defendants, as owners and occupiers of the part of the canal in question, were rated in respect of the tolls received or earned by them, no part of their receipts as carriers, except the tonnage on such freights, being comprised in the rate. The question for the consideration of this Court was, Whether the sum of 644*l.* 15*s.* 2*d.*, being four-fifths of the amount of the clear annual balance arising from all the tolls of the canal within the respondent township, after deducting all expenses of collection, repairs, and every other attendant expense of that description, be or be not a proper criterion of value, upon which such rates ought to have been made with reference to the profits necessarily arising from farms and other rateable property in the possession of the respective occupiers thereof, in the township, who were assessed upon four-fifths of the amount of their respective rents alone; and if this Court should be of the latter opinion, then the order of sessions to be quashed.—BAYLEY J. We have no doubt that the trustees must be rated as occupiers of land, and that the same principle of rating must be adopted whether the party be owner and occupier, or occupier only. If land be occupied by a person as a farmer, the value of the occupation is the rent paid by him for it. That, however, is not supposed to be the value of the land or of its produce, minus the expense of producing it; but the value, after deducting the expenses of cultivation and of the farmer's subsistence. Here the rate was made upon the full amount of the gross receipts of the trustees. I do not say that that amount is wrong. The sessions, acting upon the rule now given, might perhaps come to the same conclusion. I lay out of consideration the fact of the trustees being carriers, because their occupation only is to be considered. The profits of carrying goods are the profits of their trade. The tonnage is the profit of the land occupied by them. The other sums received by them constitute the profits of their trade. The principle of our decision in this case is, that the same rule is to be applied to all occupiers, and that the rent or sum at which the land will let is the criterion of the value of the occupation. We think this case, therefore, ought to go back to the sessions, in order that the rate may be amended.—Rate to be amended.

16. *Rex v. Mersey and Irwell Navigation*, *H. T.* 9 & 10 *G.* 4.—9 *B. & C.* 95.—Upon appeal against an assessment made by the churchwardens and overseers of the poor of the township of *Barton-upon-Irwell*, in the county of *Lancaster*, for the relief of the poor of the said township, whereby the defendants were rated as owners and occupiers on an annual charge of 2908*l.* 7*s.* 6*d.*, for *land taken and used for the Mersey and Irwell navigation, towing-paths, locks, and tonnage arising therefrom*. The sessions amended the rate, by reducing the sum of 2908*l.* 7*s.* 6*d.* to 2600*l.*, upon the ground that

By an act of parliament, certain persons were authorised to make the rivers *Mersey* and *Irwell* navigable from *L.* to *H.*, and to maintain such navigation;

and, for those purposes, to clear, cleanse, scour, open, enlarge, or straighten the river, and to dig and cut the banks, and to make new cuts, trenches, or passages for water through lands adjoining, and to build bridges, sluices, locks, &c. and to do all other things necessary for making and maintaining the navigable passage, first giving satisfaction to the owners of lands; and, in consideration of the expenses to be incurred, the undertakers were authorised to take for their own proper use and behoof certain tolls. The undertakers made the river navigable, scoured, and cleansed the same, and purchased lands for towing-paths and cuts: I held that they were not liable to be rated to the poor for land taken for the purpose of the navigation, because they were not occupiers of that land, but had a mere easement in it; secondly, that they were liable to be rated for the new cuts; thirdly, that they were liable to be rated for the wears, locks,

the amount of tonnage was overvalued, subject to the opinion of this Court on the following case:—By an act of 7 G. 1., entitled “An act for making the rivers *Mersey* and *Irwell* navigable from *Manchester* to *Liverpool*, in the county of *Lancaster*,” certain persons therein nominated as undertakers, their heirs and assigns, were authorized, at their proper costs and charges, to make the rivers *Mersey* and *Irwell* navigable and passable for boats, barges, lighters, and other vessels, from *Liverpool* to *Hunt’s Bank*, in *Manchester*; and to maintain and use such navigation by themselves or others, in such manner in, by, through, and upon the said rivers, as they should think fit; and for those purposes to clear, scour, open, enlarge, or straighten the rivers *Mersey* and *Irwell*, and to dig or cut the banks thereof; and to make any new cuts, trenches, or passages for water, in or through the lands and grounds adjoining or near unto the said rivers, or either of them, as should be necessary for the navigation of boats and other vessels, and any way necessary for the convenient carrying on and effecting the said undertaking, were it the soil or ground of his majesty, or of any other person whatsoever; and, if necessity required, to cut and remove trees, gravel beds, &c. which might hinder the navigation; and to build and erect on or over the said rivers or lands adjoining or near to the same, or the said new cuts, trenches, or passages so to be made, such and so many bridges, sluices, locks, wears, and other works as should be necessary, where they should think fit, and to alter, repair, increase, enlarge, and amend the same; to make and use necessary ways and passages for carrying goods, &c. upon, to, or from the said rivers, passages, trenches, or cuts; to amend, heighten, or alter any bridges, or to turn or alter any highways in, upon, or near to the said rivers, cuts, &c.; and to pull down, alter, or demolish any mill, wear, or other obstruction upon or contiguous to the rivers, cuts, &c.; to set out and make towing-paths for towing boats and other vessels passing in or upon the said rivers or cuts, &c.; and to do all other things necessary for making and maintaining the navigable passage of the rivers, or for the improvement thereof, the undertakers or their heirs doing as little damage as might be; first giving satisfaction to the respective owners of such mills, wears, lands, tenements, or hereditaments as should be pulled down, demolished, altered, dug up, cut, removed, or otherwise made use of or damaged by carrying on or maintaining the navigation. And it was further enacted, that in consideration of the great charges and expenses the undertakers, their heirs or assigns, would be at, not only in making the rivers navigable, but also in making, erecting, repairing, cleansing, maintaining, keeping up, and continuing the wears, works, locks, dams, sluices, bridges, and other matters necessary to be made as aforesaid, it should be lawful for them, &c. and no others, at all times thereafter to demand, receive, recover, and take for their own proper use and behoof, in respect of their charges and expenses aforesaid, for all and every such coal, cannel, stone, timber, and other goods and commodities whatsoever, as should be carried or conveyed in any boat, barge, lighter, or other vessel in, upon, to, or from any part of the said rivers *Mersey* and *Irwell*, between *Bank Key* and the said place called *Hunt’s Bank*, in *Manchester* aforesaid, such rates and duties for tonnage, over and besides what should be paid for freight or carriage of the said goods, as the undertakers, &c. should think fit,

not exceeding 3s. 4d. for every ton of such coal, cannel, &c. ; and so proportionally for every greater or less quantity or weight, the same rates and duties to be paid at such places near to the said river, and in such manner as the undertakers, &c. think fit. And, after reciting that it would be necessary in some places to haul and tow, up and down the said rivers, boats and other vessels by the strength of men, horses, engines, and other means, it was further enacted, that it should be lawful for the undertakers, &c. to set up, and for their boatmen, &c. passing or navigating in or upon the said rivers, or in or upon any cuts, streams, or passages that should be made use of as aforesaid, winches and other engines in convenient places ; and by and with the same, by strength of men, horses, or beasts going upon the said banks or lands near to the said rivers, streams, cuts, or passages in convenient manner, without the let or hinderance of any persons whatsoever, to draw, tow, or haul, up or down the said rivers, barges, boats, lighters, and other vessels. And it was thereby further enacted, that they should (where wanting), at their own costs and charges, make, set up, and from time to time maintain, convenient gates and bridges, passages, and stiles in all the hedges and fences in the towing-paths to be set out as aforesaid, and over the new cuts, trenches, and passages for water so to be made, where necessary for the occupiers of lands, tenements, and hereditaments thereunto adjoining, to come at their lands for the use and occupation of the same, in such manner as the commissioners appointed by that act should order and direct. And it was further enacted, that if they, &c. should, in pursuance of the powers given by the said act, raise the waters in the rivers *Mersey* and *Irwell* above its ancient or usual height, whereby the adjacent lands might be more liable to be overflowed or damaged than they had formerly been, that then they should, at their own proper costs and charges, from time to time cause the banks of the said rivers, and of all such streams, trenches, or brooks as come into the said rivers, or either of them, to be proportionally raised, heightened and strengthened where need should require, so as the two banks should be able to contain the water at such its raised height ; and also should maintain and repair the banks as often as occasion should require ; and if they, in pursuance of the powers aforesaid, should make any cuts, trenches, or passages for water, by reason whereof, or if by means of the navigation to be made as aforesaid, any persons should not have convenient ingress or egress into or out of their lands, tenements or other, hereditaments, as they before that time had, or as occasion should require, then the undertakers should, at their own proper costs and charges, make, erect, and maintain such sufficient bridges or other sufficient passages over or near to every such new cut, &c. as by the said commissioners should be directed. And it was further enacted, that the said rivers *Mersey* and *Irwell* for ever thereafter should be esteemed navigable from *Liverpool* to *Hunt's Bank* in *Manchester*, and that all the king's subjects, with their goods and merchandize, might have their free passage upon the said rivers, or any part thereof, between *Liverpool* and *Hunt's Bank*, with boats and other vessels, and all necessary and convenient liberties for navigating the same without any hinderance from any persons whatsoever, paying such rates or duties as were appointed by that act to be paid to the undertakers, their heirs or assigns. And, after reciting that the river

and dams
erected on their
own lands.

Mersey had been theretofore and then was navigable from *Liverpool* to *Bank Key*, it was further enacted, that all goods, &c. (as theretofore the same had been) should be and remain free from paying any toll, duty, or tonnage to the undertakers, their heirs and assigns, between *Liverpool* and *Bank Key*. And by another act of parliament, of the 4 G. 3., the then proprietors and undertakers were incorporated by the name of "The Company of Proprietors of the "*Mersey and Irwell Navigation*," and invested with the same powers as were given by the former act. The appellants and the undertakers, from whom they derive their title, have at very heavy costs and charges, and in pursuance of the powers granted to them by the act, made and maintained, and still do maintain and continue navigable the said rivers from *Liverpool* to *Manchester*. They have made (and kept in order, by repairing with gravel and sand), towing-paths by the side of the whole line of the navigation, by cutting away the brows, levelling of the lands, and erecting bridges over brooks and ditches crossing the towing-paths; *they pay rent for the towing-paths along some parts of the line*; wherever they have not bought land, they pay rent for the towing-paths. The towing-paths are not fenced off from the adjoining land except in a few places, and in these instances the fences have been made, and are maintained by the owners of the adjoining land, and not by the appellants. But gates have been erected by the company at the fences between adjoining fields, where the land owners have required it to prevent cattle trespassing, and such gates are maintained by the appellants. The banks between the river and the towing-path have been repaired sometimes by the appellants, but chiefly by the land-owners; who have, in that case, been supplied by the appellants with stone and materials at a low price to induce them to make such repairs. When the navigation is impeded, the appellants scour and dredge the river, applying the gravel and sand so taken out to the repairs of the towing-paths, and selling the surplus when they have more gravel or sand than is necessary for that purpose. In several parts of the navigation, the appellants have made new navigable cuts, connecting different parts of the river: three such cuts of the breadth of eight yards each, and being altogether 938 yards in length, have been made, and are now used by the appellants in the township of *Barton-upon-Irwell*. The land necessary for these cuts belongs to the appellants, and was taken by them under the powers of the act, and compensation made to the land-owners pursuant thereto. The length of the navigation within the township of *Barton-upon-Irwell* is nine miles seven furlongs. Six miles and a half of the towing-path is within the township of *Barton-upon-Irwell*, and the residue thereof is in other townships. There are several weirs and locks on the navigation, erected and maintained by the appellants, within the township of *Barton-upon-Irwell*; and the surplus water held up by one of the said weirs is taken from the appellants by the proprietors of a neighbouring mill, who pay an annual rent to the appellants for it. A very large traffic is carried along the navigation in flats and other vessels, belonging in part to the appellants, and the residue to other persons, who employ them in the carriage of goods between *Manchester* and *Liverpool*. The tonnage actually received by the appellants from other persons, together with the tonnage which would be received by them if the vessels so employed by themselves were the property of

other persons, amounts to a large sum; and the proportion thereof payable in respect of the length of the navigation and towing-paths, in the township of *Barton-upon-Irwell*, amounts to the sum of 2600*l*. The appellants contended, that they were not rateable at all for or in respect of the property rated; or, if rateable at all, that they were only rateable for and in respect of the cuts, and not in respect of the rest of the navigation and towing-paths; and that, in such case, they ought only to be rated in the proportionate part of the sum of 2600*l*., which should be considered payable in respect of the said cuts; and, further, that they were not rateable for tonnage upon their own vessels, which paid no such duty. But the Court of quarter sessions held, that they were liable to be rated for the whole line of navigation within the township of *Barton*, in respect of the land *taken and used by them for the Mersey and Irwell navigation, the towing-paths, weirs, locks, cuts, and sluices*, but assessed the annual value of the profits at 2600*l*., and ordered the sum to be reduced accordingly.—**LORD TENTERDEN, C. J.** I am of opinion, that the company of proprietors are not rateable for the ancient bed of the navigable part of the river; and, inasmuch as the rate which the sessions have affirmed is made on them as occupiers of that part of the navigable ancient bed of the river which is situate in the township of *Barton-upon-Irwell*, the order of sessions must be quashed. It does not follow, however, that the whole rate ought to be quashed by this Court even on these proprietors, much less the whole rate on the whole parish. Some matters there are which, according to the present state of the case, appear to be rateable; such as the new cuts, which are made through the soil of which the proprietors were actual purchasers. They must be considered, in respect of those cuts, in the same light as the proprietors of any ordinary canal. So of the locks, and the only question will be as to the amount. I say nothing about the towing-paths; for there seems to be some question whether the facts, as to the length of those in the township, are correctly stated. But inasmuch as there is one sum now applied to a subject for which the company are not rateable, joined with a subject-matter for which I think they are rateable, the inclination of my mind is to quash the order of sessions, and send the case to them that they may rate such parts as are rateable according to their own judgment, if they can come to any proper conclusion upon the question.—**BAYLEY, J.** When this question was first presented to my consideration in the case of *Rex v. Thomas* (a), it struck me that the company were liable to be rated in respect of the navigation and the other property; but, on further consideration, I think that, with reference to the navigation, viz. the navigable bed of the river, I was wrong. In order to make them rateable they must be within the words of the 43d of *Elizabeth*, “occupiers of lands or houses;” and it struck me at first, that inasmuch as they had a right to have the bed and banks of the river upheld to hold the water, which water they were to use, they might, perhaps, be called the occupiers of that land which was so covered with water, and which held the water so afterwards to be used. But, when after considering the subject, I find that they can maintain no description of action which an occupier generally is capable of maintaining; I am now disposed to think, that the correct view of the case is not that they are occupiers of the land

(a) See the next case.

covered with water, but that they had an easement only in the land. Where the proprietors of a canal purchase the land, and are themselves owners of the soil, they are rateable, on the principle that they are the occupiers of the soil which belongs to them; but, in this case, the soil, as far as we can form any judgment, does not belong to this company. They have only a qualified right to use the land, to deepen the channel of the river, and make the soil fit for the purpose of holding the water, which water they are afterwards to use; but subject to the right of navigation being vested in them, and subject to the right they have that the soil shall continue to hold the water in which the navigation is to take place, the soil remains in the ownership and occupation of those persons to whom that soil originally belonged. When the company make cuts under the powers of the act of parliament, which authorizes them to buy the land for the purpose of making these cuts, they are, with reference to those cuts, proprietors and occupiers of land, and therefore rateable in respect of that land. As they have a right also to erect weirs, and dams, and locks, those weirs, and dams, and locks, being on their own land, become their own real property; and they are the occupiers of that land on which those weirs, dams, and locks respectively are, and they are therefore rateable in respect of them. But, for the reasons I have given, (which I have thought right to state, having on a former occasion expressed an opinion that the navigation was rateable,) I am of opinion that they are not liable to be rated for the navigation. It seems to me, therefore, that the proper course is to send the rate down to the sessions for amendment. For, if the rate be quashed, this consequence will ensue; namely, that a rate will be levied in respect of the bygone time, and the former overseers of the parish will be reimbursed by rates to be levied, not on the persons who were occupiers at the time when the expenditure took place, but by a rate on those persons who have become occupiers since that time. For these reasons I think the case ought to go back to the sessions, that they may rate those parts of this property which ought to be rated.—LITLEDALE J. I am entirely of the same opinion, that the principal subject of this rate, viz. the navigation, is not rateable, and I think the case ought to go back to the sessions to have the rate amended. The inconvenience mentioned by my Brother *Bayley* would certainly arise if the rate were quashed entirely; but for that, I should have thought it more convenient that this part of the rate should have been quashed altogether. It seems to me there may be some difficulty (but we have nothing to do with that) in ascertaining how these locks and towing-paths are to be rated. The rate is an entire rate on the whole profits, and I do not see how it is possible to say how much a lock or a towing-path produces. Suppose they were to make 2000*l.* annual tolls, how can it be ascertained what proportion of that sum is contributed by the locks and towing-paths. That, however, is a question for the sessions.—PARKE J. I agree with the rest of the Court in thinking that the order of sessions should be quashed. The question has been argued with much ability, and at last is reduced to a very simple point, namely, Whether we can pronounce that these defendants are on this finding "occupiers of lands?" If they are occupiers of lands, they are rateable; if they are not occupiers of lands, they are not rateable. Many of the

early cases of rateability seem to have proceeded upon a disposition of the Court (pardonable, but perhaps not strictly correct,) to extend the operation of the statute of *Elizabeth*, so as to include as large a fund as possible in the rate. The law on this subject was at length settled in the case of *Williams v. Jones* (a). It is clear from that case, that no one can be rated unless he be an inhabitant or occupier, and these defendants are not inhabitants. The question then is, Whether they are occupiers of land? If they have a mere easement they are not rateable. Persons who have a right of common, a right of way-leave, or a right of ferry, are not rateable. This subject-matter of rate cannot be well distinguished from the case of a ferry from which the owner of the ferry derives a particular benefit, and from the use of which the public also derive a benefit. In *Williams v. Jones*, the ownery of the ferry had repaired the landing-place, which was parcel of a highway on the bank of the river, and had a post fixed in the ground there, to which the boats were usually moored, and yet he was held not to be the occupier of the highway, though he had a special power and privilege as to a part of it. Now in this case it is quite clear that as to the bed of the river, the *Mersey* and *Irwell* navigation company had only a special power, they had not the exclusive occupation of any part of it. It seems to me, therefore, they are not rateable for the bed of the river. No person can be an occupier unless he has the exclusive right to enjoy some portion of the soil. It will be found that that obtains in the case of the gas companies. There the companies who have gas-pipes have the exclusive right to enjoy a portion of the soil; they have the exclusive right of occupying by means of these pipes that portion of the soil in which the main is. But in this case, the company have no exclusive right to occupy any part of the soil of the bed of the river. As to the locks, if it shall appear that the property of the soil (where the locks are made) is in the company, they will be rateable. As to the cuts made at the outset of the navigation (the property being in the company), they are rateable in respect of them. There may be a difficulty in affixing the quantum of rate; that, however, is not for us but for the sessions to settle. They will fix that according to the degree of productive value which they may ascertain to arise from the occupation of this particular part of the soil. It seems clear, on the whole, that in this case the company of the *Mersey* and *Irwell* navigation are not rateable for the bed of the river, for they have merely an easement in it. Probably, certain acts which they have exercised might be *primâ facie* evidence of their being owners of the soil; but the moment the statute is looked at, it is quite clear that those acts are referable to the powers they have under the statute, and not to any exclusive right to the possession of the soil. It seems to me, therefore, that they are not liable to be rated for the bed of the river, having only an easement in it, but that they are liable to be rated for the cuts, for they are owners of the soil of them, and derive a benefit from them, either directly in the shape of toll, which they receive from other persons, or indirectly in respect of what they receive from their own customers; and whether they receive it from other persons who pay toll, or receive it from their own customers at the end of

(a) 12 East, 346.

the voyage, makes no difference, as the enjoyment of that land is profitable to them in both cases, and for that profit they ought to be rated. As to the remaining question, it will be whether they are owners of the soil on which the locks are placed; if they are, and if they have the land on which the locks are placed in their use, if they have the right of possession, and receive the profit arising on that, they will be rateable.—LORD TENTERDEN C. J. All that we can pronounce is, that we quash the order of sessions: the rate is not brought up before us.—Order of sessions quashed.

By an act of parliament certain persons were authorized to make the river *Avon* navigable from *B.* to *H.*, and to maintain such navigation; and, for those purposes, to clear, scour, open, enlarge, or straighten the river, to dig and cut the banks, to make new cuts, trenches, or passages for water through lands adjoining; and to build bridges, sluices, locks, &c. and to do all the other things necessary for making and maintaining the navigable passage, first giving satisfaction to the owners of lands; and commissioners were appointed to settle what satisfaction every person should have for such proportion of his lands as should be cut, dug, removed, or made use of for carrying on the undertaking, and to settle what proportion of such purchase-money or satisfaction every person, having a particular estate or interest in any of the premises, should have for his respective interest; and, in consideration of the expenses to be incurred, the undertakers were authorised to take, for their own proper use and behoof, certain tolls. The undertakers made the river navigable, scoured and cleansed the same, and made a certain cut and lock, for the purposes of the navigation, upon lands purchased by them: Held, that they were not liable to be rated to the poor for the land covered with water, being part of the river *Avon*, because they were not occupiers of that land, but had a mere easement in it; secondly, that they were liable to be rated for the cut and lock.

17. *Rez v. Thomas*, *H. T.* 9 & 10 *G.* 4—9 *B.* & *C.* 114.—Upon an appeal against a rate for the relief of the poor of the parish of *Keynsham*, in the county of *Somerset*, whereby the defendant and other proprietors of the navigation of the river *Avon*, from *Hanham* mills to the city of *Bath*, were rated in the aggregate sum of 2*l.* 10*s.* upon an annual value of 100*l.*, for or in respect of a lock, sluice, cut, and land covered with water, being part of the river *Avon* in the said parish, and for profits arising from the same by carriage of merchandize and persons thereupon, being a proportionate part of the tolls collected and received in respect of merchandize and persons carried upon the river *Avon*, from and to *Hanham* mills to and from the city of *Bath*, the sessions amended the rate by striking out the words “and land covered with water, being part of the river *Avon* in this parish,” and by altering “100*l.*” to 5*l.*, and 2*l.* 10*s.* to 2*s.* 6*d.*, subject to the opinion of this court on the following case:—The river *Avon* was made navigable soon after the passing of the 10 *Anne*, c. 8., entitled “An Act for making the river *Avon*, in the “counties of *Somerset* and *Gloucester*, navigable from the city of “*Bath* to or near *Hanham* mills,” and was so made under the authority of that act by the proprietors of the navigation, the predecessors of the appellants. By the 47 *G.* 3., entitled “An Act for “enabling the proprietors of the navigation of the river *Avon*, in the “counties of *Somerset* and *Gloucester*, from the city of *Bath* to or “near *Hanham* mills, to make and maintain a horse towing-path “for the purpose of towing and hauling with horses, or otherwise, “boats, lighters, and other vessels up and down the said river,” further powers were given to the said proprietors. The river has continued to the time of the rate navigated and navigable, and the proprietors have received the tolls, rates, and duties given by the acts, or either of them, from all passengers and goods passing on the river. No part of the towing-path mentioned in the act of the 47 *G.* 3. is within the parish of *Keynsham*. A certain cut was, before the passing of the 47 *G.* 3., made in the respondent parish as part of the river, and a certain lock within that parish, and in that cut, was at the same time constructed at the expense of the proprietors for the purposes of the navigation, and under the provisions of the statute of *Anne*, and both have been and still are used for the same purposes by persons paying tolls, rates, and duties to

the proprietors. And the proprietors have and still do, under the powers of the statute of *Anne*, from time to time as need requires, clear, scour, and cleanse the bed of the river. The clear annual amount of the tolls, rates, and duties received by virtue of the statute of *Anne* on the navigation, which is eleven miles in length, is 4000*l.* per annum. The length of the river in the respondent parish is three miles, the length of the cut in that parish is 300 yards. No specific toll, rate, or duty is payable for passing the lock or cut. For the purposes of the tolls, rates, and duties, the cut and lock are parts of the navigation of the river. The cut and lock are substituted for the natural river. None of the appellants reside within the parish of the respondents. The question for the opinion of this Court was, Whether the appellants were rateable for the whole or any part of the subject-matter of the rate? If they should be of opinion that the whole is rateable, the rate to be confirmed; or, if they should be of opinion that the cut and lock only are rateable, the rate to be amended by reducing the annual value to 5*l.*, and the amount of assessment to 2*s.* 6*d.* If they should be of opinion that the lock only is rateable, then the rate to be amended by reducing the annual value to 2*l.* 10*s.*, and the amount of the assessment to 1*s.* 3*d.* If of opinion that no part is rateable, the rate to be quashed. This case was first argued at the sittings in Banc after *Michaelmas* term; and in the course of that argument *Bayley* J. intimated his opinion that the company were rateable for the land covered with water; but by the direction of the Court, the case was argued again a second time.—LORD TENTERDEN C. J. delivered the judgment of the Court. In this case the rate was imposed in respect of locks, sluice, and land covered with water, and for profits arising from the same. The sessions on appeal amended the rate by striking out the words, “land covered with water.” The question in this case was precisely the same as that in *The King v. The Company of Proprietors of the Irwell and Mersey Navigation*. We were of opinion in that case, that the land covered with water was not in the occupation of the company of proprietors of the *Irwell* and *Mersey* navigation, and, therefore, that they were not rateable in respect of the same; and upon the same ground in this case, we are of opinion that the proprietors of the navigation are not occupiers of the land covered with water, being part of the river *Avon*, and are not liable to be rated in respect of the same; and, consequently, the court of quarter sessions properly amended the rate by striking out the words, “land covered with water, being part of the river *Avon*.” We agree with the quarter sessions in deciding, that the cut or navigable canal which was actually made by this company upon land purchased by them, and the lock which is erected on such land, are according to all the authorities fit subjects to be rated for the poor; and this our opinion being conformable to that of the quarter sessions, the effect is, that the rule for setting aside the order of the court of quarter sessions must be discharged.—Order of sessions confirmed.

18. *Rex v. Lord Granville*, *H. T.* 9 & 10 *G.* 4.—9 *B. & C.* 188.—The defendant appealed against a rate made the 22d day of *February* 1828, for the relief of the poor of the parish of *Stoke-upon-Trent*, whereby he was rated for a colliery, including engines and railway, at 61*l.* 17*s.* 5*d.*, being a rate made upon the sum of 989*l.* 18*s.*

A lessee of a coal-mine, being the occupier, having erected a steam engine for

working the mine, and hereby improved its annual value, is liable to be rated for such improved annual value.

The court of quarter sessions confirmed the rate, subject to the opinion of this Court on the following case:—The defendant is the lessee and occupier of a colliery in the parish of *Stoke-upon-Trent*. In the year ending on the 31st *December* last he paid to his landlord for royalty a mine-rent upon the coals raised from the said colliery, viz. the sum of 802*l.* 8*s.*, which sum is a *fair mine-rent* for a tenant to pay upon the quantity of coals raised in that year. The sum of 802*l.* 8*s.* forms part of the sum of 989*l.* 18*s.*, upon which the defendant is charged. The defendant, some time since, erected several steam and other engines in the colliery, which are used solely in draining the mines and raising the coals to the surface; and he also laid down a railway, which is solely employed in facilitating the carriage of the coals. These form the machinery with which the mines are worked, and without which they could not be worked; and there would be no mine-rent at all unless such machinery were used. The sum of 187*l.* 10*s.*, which is the remainder of 989*l.* 18*s.*, on which the defendant is charged, is a charge over and above the amount of the mine-rent introduced into the assessment in respect of the engines and railway. And it is calculated, that if the colliery were now to be let by the defendant to a sub-tenant, along with the engines and railways, the total sum of 989*l.* 18*s.* would not be more than a fair rent for such sub-tenant to pay. If the Court should be of opinion, that the defendant ought to be rated for his engines and railways, in addition to what he ought to pay as mine-rent to his landlord, then the rate was to stand; but if not, then the rate was to be reduced to 50*l.* 3*s.*—BAYLEY J. I have no doubt that the defendant ought to be rated for his engines and railway. Whether the sessions have made proper deductions we are not to decide. The only point for our consideration is, Whether the defendant ought to be rated for the engines and railway? If the owner had occupied the mine he would have been liable to be rated according to the improved value of the property; and where the owner of a mine fixes an engine, or otherwise, by expenditure of his capital, raises the value of his property, he will be rateable for the value of that property so improved by his expenditure. If it be leased to a tenant who is to incur the same expenditure of erecting an engine, the owner will receive a less royalty; but as a greater quantity of coal will be raised, the tenant will be thereby remunerated for his expenditure, and I think the tenant, being the occupier, is liable to be rated for such improved value. The order of sessions must, therefore, be confirmed.—LITLEDALE J. The question is, Whether the defendant be liable to be rated at the increased amount mentioned in the case, by reason of the engines and railway which he has erected? Generally speaking, the rate is to be in proportion to the rent. Here the tenant has erected an engine, which renders the mine more productive. It is immaterial, with reference to rateability, whether the landlord or tenant erect an engine or lay down a railway. The bargain between the landlord and tenant may be varied on that account, but the occupier of the property is rateable in respect of its improved annual value. I think, therefore, that the lessee of this mine being the occupier, was properly rated for the improved value.—PARKER J. The question left to us is, Whether the defendant be liable to be rated for improvements? I think he clearly is. It is found by the

sessions that the value of the property is raised by the improvements from 802*l.* 8*s.* to 989*l.* 18*s.* Whether the amount of the rate is precisely what it ought to be it is not for us to determine. The sessions seem to have estimated the value according to the sum at which it would let to an under-tenant. That, perhaps, may not be the correct principle on which such property ought to be rated. The annual value is part only of the annual rent: some portion of that rent should be considered applicable to repairing and replacing the engines. In *Rex v. Tomlinson* (a) this distinction was taken. The only question for us, however, is, Whether it be right in principle to rate the lessee in respect of an annual value increased by reason of improvements made by himself? I think he was properly rated for the improved value.—Order of sessions confirmed.

19. *Rex v. Green and Others*, *H. T.* 9 & 10 *G.* 4.—9 *B. & C.* 203.—Upon an appeal by the defendants, widows, inhabitants and occupiers of certain houses and premises in the parish of *Lee*, in the county of *Kent*, against a rate or assessment made for the relief of the poor of that parish, dated the 2d of *April* 1828, the sessions confirmed the rate, subject to the opinion of this Court on the following case:—The master and wardens of the merchant tailors of the fraternity of *St. John the Baptist*, in the city of *London*, are and have long been patrons of a charitable establishment for the relief of the widows of poor freemen of the company of merchant tailors. About three years ago the company purchased land in the parish of *Lee*, whereon they erected thirty alms-houses for the reception of such poor widows. The appellants are poor women, and are resident in the alms-houses as alms-women and objects of the charitable establishment, and pay no rent for the same, and are also removable at the pleasure of the master, wardens, and court of assistants of the company of merchant tailors. The land upon which the alms-houses are built, comprising about two acres, is the freehold property of the merchant tailors' company; and the same was purchased, and the alms-houses erected and built thereon, at the sole expence of the company, out of their corporate fund. Before the purchase of the land as aforesaid, the same was rated on the occupier thereof at the rate of 2*l.* 5*s.* per annum, and the parochial rates were regularly paid in respect thereof upon such rating. The question for the opinion of this Court was, Whether the defendants were liable to be rated for the relief of the poor of the said parish?—*BAYLEY J.* I have no difficulty in coming to the conclusion that this property is rateable. The statute of the 43 *Eliz.* c. 2. enacts "that the rate shall "be imposed upon every occupier of lands, houses, &c." It has been made a question in several cases, whether a person residing in a house used for charitable purposes is liable to contribute to the relief of the poor. In *Rex v. Catt* (b), it was decided that the master of a free-school appointed by the minister and inhabitants of a parish under a charitable trust, occupying a house and garden belonging to the school, was rateable, although they were held by him as a recompence for teaching, he being a beneficial occupier. Lord *Kenyon* there says, "To the authority of the cases cited I subscribe my assent. They proceeded on the ground that there was "no occupier. In *Rex v. Waldo* (c) the rate was held to be bad

The objects of a charity in the actual occupation of alms-houses, paying no rent for the same, and removable at the pleasure of the patrons of the charity, are rateable to the relief of the poor in respect of such occupation.

(a) *Ante*, pl. 5. (b) 6 *T. R.* 332. 1 *Bott*, pl. 205. (c) *Cald.* 358. 1 *Bott*, pl. 182.

"because there was no occupier; the poor children who were placed there for education could not be considered as occupiers, neither could the woman-servant who superintended them. That case could not be distinguished from that of *St. Luke's Hospital*, where the rate was also quashed, because there was no beneficial occupier. But when a case arises where a person is found to be the beneficial occupier of a house, he must be rated, though the house be appropriated to charitable purposes. As long as *Richmond Park* continued in the hands of the king, it was not rateable: but when the ranger made profits of it, and beneficially occupied it, it was held to be rateable in his hands. So if this person had been put in merely to look after the pupils, and had not occupied the house, he would not have been rateable; but it appears that he is the beneficial occupier of this house and garden. By the old land-tax act, certain property given for charitable purposes is exempted from that tax: but there is no such exemption in the acts respecting the relief of the poor." In *Rex v. Munday (a)*, the objects of a charitable foundation, in the actual occupation of an alms-house, were held to be rateable. That case is not distinguishable from the present in point of principle. There they were rated for the alms-house and lands in the sum of 2*l.* 5*s.*, and the Court held that they were rateable for the *house* and lands; they must, therefore, have been considered as occupying that *house* rent free. It is true that in this case the objects of the charity are described as poor persons, but there is no distinction in the statute between poor persons and others. If they are occupiers of property from which they derive a benefit, they are rateable. Mr. *Nolan*, in his *Treatise on the Poor Laws*, p. 188., after stating the authorities upon this subject, says, "The distinction, therefore, as to where charities are rateable, and where they are not so, seems to depend upon this: whether there is any body who can be rated as *beneficial occupier*." I do not cite this book as an authority, but merely to shew that if the merchant tailors' company, before they appealed against the rate in question, had looked into the authorities collected in that book, they would have found that there was no ground for the appeal.—LITTLEDALE and PARKE J. concurred.—Order of sessions confirmed.

The annual profit is the rent which a tenant would give, he paying the poor rates, and the expenses of repairs and the other annual expenses necessary for making the subject of occupation productive, and allowing him a deduction from the rent where the subject is of a perishable nature towards the expense of renewing or re-producing it.

20. *Rex v. Lower Mitton*, T. T. 10 G. 4.—9 B. & C. 810.—*Ante*.

An act of parliament of the 9 & 10 W. 3. gave to certain undertakers authority to make navigable the river *Aire*, and for that purpose to cleanse and

21. *Rex v. The Aire and Calder Navigation Company*, T. T. 10 G. 4.—9 B & C. 820.—Upon an appeal against a rate for the relief of the poor of the township of *Brotherton*, in the West Riding of the county of *York*, whereby the defendants were assessed in the sum 150*l.* on a total annual value of 2000*l.* as occupiers or owners of the cut or canal, and that part of the river *Aire* lying within the township of *Brotherton*, dams, locks, and weirs, and toll-dues or rates the sessions confirmed the rate, subject to the opinion of this

(a) 1 *East*, 584, 1 *Bott*, pl. 211.

Court on the following case:—By an act passed in the 10 & 11 *W. 3.* for making and keeping navigable the rivers of *Aire* and *Calder*, in the county of *York*, certain persons therein named were empowered, at their own proper costs, to make navigable and passable with barges, boats, lighters, and other vessels, the said rivers *Aire* and *Calder* from *Weeland* up to the towns of *Leeds* and *Wakefield*, and for that purpose to cleanse, scour, open, enlarge, or straighten the said rivers, or either of them, and to dig or cut the banks of the same, and to make new or larger cuts, trenches, passages for water, in, upon, or through the lands or grounds adjoining or lying contiguous to the said rivers, or either of them, as they should think fit or necessary for the better carrying on and effecting the said undertaking; and to build, erect, set up, and make, upon the lands adjoining to the said rivers, or either of them, locks, weirs, turnpikes, pens for water cranes, wharfs, and warehouses, where the said undertakers, their heirs or assigns, should think fit. And it was enacted, that for and in consideration of the great expenses which the undertakers, their heirs or assigns, would be at, not only in making the said rivers navigable as aforesaid, but also in repairing and keeping the said rivers navigable and useful for the said navigation, it should be lawful for the said undertakers, their heirs, executors, administrators, and assigns, and no others, from time to time, and at all times thereafter, to demand and take from all persons that should send down or receive up any packs or trusses of cloth, or other merchandizes, wares, or commodities whatsoever that should be conveyed up or down the said rivers, or either of them, the rates and tolls thereafter mentioned; saving and always reserving unto the corporation of *Pontefract*, in the county of *York*, and to all other person and persons, their respective heirs, successors, and assigns, all royalties and rights, and privileges of fishing, and other dues and duties, in or upon the said rivers, or either of them. By an act of the 14 *G. 3.*, entitled “An Act to amend an Act passed in the 10 & 11 *W. 3.*,” it was enacted, that it should be lawful for the said undertakers, at all times, at their discretion, to cleanse, scour, deepen, enlarge, straighten, contract, and improve, and in a good navigable state to keep and preserve, by all necessary and proper works, ways, and means, as well the said several cuts and canals, and every of them, as also the cuts made under the authority of the said act of *W. 3.*, and the channels and courses of the said rivers *Aire* and *Calder*, and the beds thereof respectively, not only from the said towns of *Leeds* and *Wakefield* to the place called *Weeland*, but also from *Weeland* to the conflux or conjunction of the said river *Aire* with the river *Ouze*; and to remove all beds of earth, soil, sand, gravel, and stone, and all other obstructions and impediments whatsoever, which any wise obstructed the said navigation, either in haling, sailing, or towing of boats, barges, &c. with men, horses, or otherwise; and also to build and set up, or make over, across, or in the said cuts, canal, and channels or courses of the said rivers *Aire* and *Calder* aforesaid, and upon the lands and grounds adjoining or near unto the same, such and so many bridges, tunnels, culverts, locks, sluices, floodgates and other gates, pens for water, weirs, jetties, weigh-beams, winches, cranes, engines, and other works, as should be thought necessary or convenient for the said navigation. And by s. 110 of the said act, after reciting that the

scour the same, and dig and cut the banks. By a subsequent act, reciting that the legal estate and interest in the navigation of the said river and divers messuages, mills, warehouses, buildings, lands, tenements, and hereditaments, was vested in trustees, they were authorised by deed to sell and convey in fee such messuages, mills, lands, or tenements belonging to the undertakers, or to convey in fee, by way of mortgage as well the said navigation as also all or any messuages, mills, lands, tenements, and hereditaments, being the property of the undertakers: Held, that the word “navigation” in that act imported an incorporeal hereditament; and the first act having given the undertakers an incorporeal hereditament only in the bed of the river, they were not rateable to the poor as occupiers or owners of the river *Aire*.

legal estate and interest in the then present navigation of the said rivers, with the works and appurtenances of navigation thereunto belonging, and the tolls and duties by the said former act granted, and divers messuages, mills, warehouses, buildings, lands, tenements, and hereditaments, vested in Sir *W. Milner*, *Jeremiah Dixon*, *Richard Wilson*, and *Richard Burton*, and their heirs,—that is to say, one full moiety or half part of all the premises to the use and behoof of the said Sir *W. Milner* and *Jeremiah Dixon*, their heirs and assigns for ever; and the other full moiety or half part of all the premises to the use and behoof of the said *Richard Wilson* and *Richard Burton*, their heirs and assigns for ever,—nevertheless upon trust for themselves and the rest of the undertakers of the said navigation, their heirs and assigns; it was enacted, that all and every the lands and hereditaments to be purchased by the undertakers, their heirs and assigns, or for which any sum or sums of money should be assessed under and by virtue of that act, should, upon payment of the purchase-money for the same, or the sum or sums so to be assessed in satisfaction, be conveyed unto, or otherwise should, together with all the rates, tolls, and duties by the now reciting act granted, and the said cuts and canal, and every of them, and all other the works of navigation to be made by virtue of the powers thereof, stand and be vested in the said Sir *W. Milner*, *Jeremiah Dixon*, *Richard Wilson*, and *Richard Burton*, their heirs and assigns for ever, upon the like or the same trusts, and to and for the like uses, intents, and purposes, and subject to such or the same conditions, provisoes, restrictions, and agreements, in all respects whatsoever, as they the said Sir *W. Milner*, *Jeremiah Dixon*, *R. Wilson*, and *R. Burton*, then stood seized of the said then present navigation, tolls, and duties granted by the said former act, and the messuages, mills, warehouses, buildings, lands, tenements, and hereditaments aforesaid; and to, for, and upon no other use, trust, intent, or purpose whatsoever. And by the said act, after reciting that the said undertakers stood indebted in divers sums of money on the account of several purchases by them made or contracted for, of certain messuages, mills, lands, and tenements upon or near to the said navigation, and upon other accounts concerning the same; and also reciting that the defending the property of the undertakers, and the obtaining that act, had been, and the making and executing the several proposed cuts, canal, and other works for the improvement of the navigation, would be attended with considerable expense, and it might become necessary for the said undertakers to raise money, as well for defraying such debts and expenses as for making future purchases and improvements in their said navigation; it was enacted, that it should be lawful to and for the trustees in whom the legal estate and interest of the said navigation and premises should be then vested, and they the said trustees, and their heirs, were thereby empowered and directed, by any deed or deeds to be by them executed in the presence of two or more credible witnesses, as well to sell and convey in fee simple such messuages, mills, lands, or tenements belonging to the said undertakers, their heirs and assigns, as should be directed to be sold and conveyed as aforesaid, or to grant, demise, convey, and assure in fee, or for any term or number of years by way of mortgage, as well the said navigation and the tolls, rates, and duties of the same, as also

all or any messuages, mills, lands, tenements, and hereditaments, being the undivided property or estate of, or which should thereafter belong to, the undertakers, their heirs or assigns, or any part or parts thereof, as a security for the repayment of all sums of money to be raised or borrowed, unto such person and persons respectively, or his, her, or their trustee or trustees, as should be willing to advance and lend the same. In pursuance of the powers contained in the said acts of parliament, the undertakers of the navigation of the rivers *Aire* and *Calder* have made the said rivers, and still maintain the same navigable and passable in the manner directed by the acts. The river *Aire* passes through the respondents' township. The river navigation in that township is of the length of 5428 yards. In one part of the river in that township there is a weir across the river, and a side cut with locks for the purpose of passing boats and barges from the higher level above to the lower level below the weir. The side cut is of the length of 186 yards, and had been made by the undertakers of the navigation in pursuance of the powers given them for that purpose by the act of *W. 3.* The undertakers of the navigation of the *Aire* and *Calder* had never before been rated to the poor in the township of *Brotherton*, in respect of the navigation, or of their dams, locks, weirs, or the tolls arising therefrom; but have been for many years, and antecedently to the passing of the last-mentioned act of the 14 *G. 3.*, rated in respect of the tolls of their navigation in the township of *Leeds* and *Wakefield*. The tolls due in respect of goods carried along the navigable channel in the township of *Brotherton* amount to the sum at which the appellants are rated, but the proportion due in respect of the passage along that portion of the navigable channel which consists of an artificial cut falls far short of that sum. No tolls are received in the township of *Brotherton*. The appellants contended that they were not, under the circumstances, liable to be rated for the relief of the poor in the township of *Brotherton*, in respect of the cut or canal, or that part of the river *Aire* lying in *Brotherton*, or the dams, locks, and weirs, tolls, dues, or rates, or any of them: or, at any rate, that they were not rateable in respect of the part of the river *Aire* lying in *Brotherton*, or the tolls, dues, or rates; and that the rate was bad, as including conjointly various matters, some of which were clearly not rateable, and for not stating explicitly how much was laid on each subject-matter of assessment. The sessions, however, were of opinion that the appellants were, under the circumstances stated, liable to be rated in respect of the whole of the navigable channel; and confirmed the rate generally, subject to the opinion of this Court on the whole case.—BAYLEY J. I think that the undertakers of the *Aire* and *Calder* navigation are not liable to be rated for the bed of the river. In order to make them rateable, they must be within the words of the forty-third of *Elizabeth*, "occupiers of lands or houses." *Rex v. Irwell and Mersey Navigation*, and *Rex v. Thomas*, have established as a rule, that where an act of parliament, passed for the purpose of making navigable a natural river, does not vest in the undertakers of the navigation the bed of the river, but gives them for that purpose a mere privilege of scouring and cleansing it, they are not occupiers of the land used for the purpose of navigation, but have a mere easement in it. Now, the language of the 9 & 10 *W. 3.* so nearly resembles that used in the act of parliament in *Rex v. Ir-*

well and Mersey Navigation Company, that, if the case depended on that alone, it is conceded it would not be distinguishable from that case; and that if that case was rightly decided, the undertakers of the *Aire and Calder Navigation* are not occupiers of land. But then it is said, that the language used in the 14 G. 3. shews that the company are owners and occupiers of the bed of the river. The statute 9 & 10 W. 3. having given to the undertakers an incorporeal hereditament, the 110th section of the 14 G. 3. recites, that the legal estate and interest in the navigation, is vested in the trustees. The argument in this case turns entirely on the meaning of the word *navigation*, as there used. If it mean only the incorporeal right of cleansing and scouring the river for the purpose of making it navigable, it does not shew that they are owners of the bed of the river. It being clear that they have some right, we must refer to the statute 9 & 10 W. 3. to learn what that right is. According to *Rex v. Irwell and Mersey Navigation*, that statute gave to the undertakers an incorporeal right only. Then, assuming that to be so, there is nothing in the statute 14 G. 3. to shew that the legislature intended to give them any other right. During the period which elapsed between the time of passing the 9 & 10 W. 3. and the 14 G. 3., the company probably exercised the power of purchasing lands, and acquired corporeal property in those lands. The 110th section recites, that the legal estate in the navigation, as well as in the lands and buildings, is in the trustees. It vests nothing in them. The statute 9 & 10 W. 3. is the only one which vests property in them; and it gives the undertakers an incorporeal hereditament only in the bed of the river, and a corporeal hereditament in other things, messuages, and lands. But it has been said, that another clause gives to the persons having the legal estate and interest in the navigation, as well as the other property, authority to mortgage in fee the navigation, and the tolls arising therefrom, as well as the other property; and that the introduction of the word *navigation* was superfluous, unless it was thereby intended to give to the trustees of the navigation the power to convey the fee in a corporeal hereditament. The word *navigation*, however, would authorise the trustees, by the introduction of that word in the mortgage-deed, to give the mortgagee the right to cleanse and scour the river, and to make or maintain it navigable, and pass to the mortgagee the legal estate or interest which the trustees have in the incorporeal hereditament. That being so, there is nothing in the act of the 14 G. 3. to shew that the company are owners or occupiers of the bed of the river: and it is clear that under the first act they acquired an easement only in the bed of the river: in respect of which they are not liable to be rated.—LITLEDALE J. It is perfectly clear that the undertakers of the navigation took no interest in the soil of the bed of the river by the statute 9 & 10 W. 3., but a power only to be exercised in it for the purpose of making and maintaining the river navigable. But then it is said, that the recital in the 14 G. 3. s. 110. that the legal estate and interest in the navigation was vested in the trustees, and the power given to them by another clause to mortgage the navigation and the tolls arising therefrom, in fee, shew that they had the fee in corporeal property, viz. the bed of the river. That depends entirely on the meaning of the word *navigation* in those clauses. I think that that word, as there used, imports the power

or right of navigating the river, and not any interest in the soil. That being so, it only recognised the incorporeal right given by the former statute. The undertakers, then, are not occupiers of land, and therefore not liable to be rated to the relief of the poor.—*PARKE, J.* The rate is made on the undertakers of the *Aire and Calder* navigation, as occupiers. The question is, Whether they can be considered as occupiers of land. It is now established, that where parties have a mere easement in the bed of a river, they are not occupiers of the land covered with water. In this case, if the undertakers of the navigation have the soil, they must have acquired it by a contract with the former owners of the soil, or by the act of parliament. Now, it is not even suggested that they acquired it by any contract with the former owners. It is conceded that the 9 & 10 W. 3. does not give the company the soil: but it is said that the 14 G. 3. does. Section 110. recites, that the legal estate and interest in the navigation is vested in the trustees. That must be the legal estate or interest already vested in the undertakers by the 14 G. 3. That was an interest in an incorporeal hereditament. The subsequent clause, which enables the trustees to mortgage in fee the navigation, does not carry the case further. It applies only to the legal estate vested in them, viz. the incorporeal right. The company were not occupiers of the land which constitutes the river, but had a mere easement on it. They are not therefore liable to be rated. Order of sessions quashed. The rate to be amended by striking out that part of the assessment on the defendants which respects the river *Aire*.

22. *Rex v. Oxford Canal Company, M. T. 10 G. 4.—10 B. & C. 163.* Ante pl. 4.

sum paid by the proprietors for the poor rate, the expense of collecting the tolls, of repairing the banks of the canal, and of supplying it water, ought to be deducted from the gross profits.

In fixing the amount of the poor's rate, the

23. *Rex v. Barnes, T. T. 11 G. 4. & 1 W. 4.—1 B. & Ad. 113.*—Upon appeal by the *Hammersmith Bridge Company* against a rate or assessment for the relief of the poor of the parish of *Barnes*, in the county of *Surrey*, made the 14th day of *April* 1829, and which said rate was allowed by two of his Majesty's justices of the peace, the court of quarter sessions allowed the appeal, subject to the opinion of this Court on the following case:—The appellants, as the proprietors of *Hammersmith Bridge*, were rated or assessed in the aggregate sum of 25*l.*, upon an annual value of 400*l.*, in respect of land, on which they have erected a bridge, and made a road thereto, and in respect of the tolls which are payable therein. By an act of the 5 G. 4. c. cxii., intituled, "An Act for building a bridge over the river *Thames*, from the hamlet of *Hammersmith* in the county of *Middlesex*, to the parish of *Barnes* in the county of *Surrey*, and for making convenient roads and avenues to communicate with such bridge," and which was to be taken as part of the case, certain persons being proprietors, and therein nominated the *Hammersmith Bridge Company*, their successors, administrators, and assigns, were authorised to purchase lands and other hereditaments, to them, their successors, and assigns, for making, erecting, and completing, the said bridge, roads, and ways, and for other purposes therein mentioned; and for that purpose they were empowered to raise money, and to receive the profits arising from the tolls, rates, and emoluments, to be received by the said company in respect of the said bridge, which was by the said act declared to be a public bridge.

A bridge was erected over a navigable river, pursuant to the provisions of an act of parliament. The proprietors purchased on each side of the river, in parishes A. and B. land on which they erected a pier and an abutment. They were authorised to erect toll-gates and to take certain tolls, before any foot passengers, &c. should be permitted to pass or return over or through the bridge. The proprietors took tolls at one side of the bridge only in parish

A.: Held, that they were rateable to the relief of the poor for the land occupied by them in parish B.

Certain other powers were given to the company by an act made and passed in the 9 G. 4. for altering and amending the said act of the 5 G. 4. c. cxii., and which act of the 9 G. 4. was to be taken as part of the case. The *Hammersmith Bridge Company* purchased land in the parish of *Barnes*, on which they erected and built the fixture pier or abutment of the bridge which was on the *Surrey* side, and the person who sold the land to the said company, on which the said fixture pier or abutment rested, had always been assessed by, and paid poor rates to, the parish of *Barnes* in respect to the said land. Part of the road of approach to the said bridge on the *Barnes* side was purchased by the company of a person who had always been assessed and paid poor rates to the parish of *Barnes* in respect thereof. One half of the said bridge is in the parish of *Barnes*, and the other half in the hamlet of *Hammersmith*: the tolls for passing over the bridge are paid and received on the *Hammersmith* side; no tolls are paid or received on the *Barnes* side, and no toll is demanded unless the carriage or passenger, &c. pass through the gate on the *Hammersmith* side; nor is there any toll-house or other building used or occupied by the company or their servants on the *Barnes* side. The appellants, the now proprietors of the bridge, contended that they were rated for land, and in respect of tolls, for which they ought not to be rated or assessed.—BAYLEY, J. This is a very clear case. The proprietor of land is liable to be rated to the relief of the poor in the parish where the land lies. The *Hammersmith Bridge Company* have, in the parish of *Barnes*, land used by them for the purpose of facilitating the passage over the *Thames*, and they are entitled to receive from all persons passing their bridge certain tolls. Then what is the character of their occupation of that land? It is a valuable occupation in respect of the money which the land produces to the company, by being appropriated to the purpose of facilitating the passage over the *Thames*, for which passage they receive tolls. The quantum is a question for the sessions. All that we decide is, that the land is rateable property in the place where it is situate. There the profit is earned, though the money may be actually received elsewhere.—LITLEDALE, J. The tolls are payable for passing over the bridge, not for passing through the toll-gates. The gates are put up merely to prevent persons passing over the bridge without paying the toll.—PARKE, J. concurred. — Order of sessions quashed.

By act of parliament the tithes in a parish were extinguished, and in lieu thereof the rector entitled to a corn-rent. In a rate for the relief of the poor, he was assessed for the full amount of that corn-rent less the parochial rates. The farmers in the parish who paid the corn-rent to the

24. *Rex v. Joddrell*, M. T. 1 W. 4.—1 B. & Ad. 403.—Upon appeal against a rate or assessment for the relief of the poor of the parish of *Yelling*, in the county of *Huntingdon*, the sessions confirmed the rate, subject to the opinion of this Court on the following case:—The parish of *Yelling* was enclosed under an act of parliament passed in the fifty-ninth year of the reign of *George III.*, intitled “An Act for enclosing lands within the parish of *Yelling*, in the county of *Huntingdon*, and for making a compensation for the “tithes.” By this act the tithes were extinguished, and a compensation made in lieu thereof. On the part of the appellant it was proved, and on the other part not disputed, that the assessment for the rate appealed against was made on the bonâ fide amount of the rack-rent which the farms were letting at, and were worth to let at the time; that *Elizabeth Bull*, one of the respondents, the occupier of one farm, the assessment upon which was the subject of this appeal, was therefore assessed in the sum of 226*l.*, and that the said sum was the actual rack-rent paid by her for the same, and paid without any

deduction whatsoever; that in the said assessment, the said *Elizabeth Bull* was in no manner whatsoever assessed in respect of the corn-rent or compensation for tithe paid to the rector for the same, and that she paid annually to the rector in respect thereof, 93*l.* 6*s.* 6*d.* That *James Ford*, the other respondent and occupier of the other farm, the assessment on which was also the subject of this appeal, was assessed in the sum of 60*l.*, the actual rack-rent paid without deduction. That the said *James Ford* was not therein assessed in respect of the corn-rent, and that he paid 29*l.* 13*s.* for the same to the rector. That in the said assessment the appellant and rector is assessed in the sum of 368*l.*, in respect of the gross payments for compensation for tithes amounting to 452*l.* 2*s.* 0½*d.*, and that the deduction in the assessment allowed the rector (to wit) 83*l.* 2*s.* 0½*d.* is the amount of parochial dues levied on 451*l.* 2*s.* 0½*d.* And it was objected by the appellant, that the farms should have been assessed in the amount of the rent paid to the landlord, added to the amount of the compensation paid to the rector, such being the actual value of the land to let at rack-rent; but the Court did not allow the objection. And it was further objected by the appellant, that as he was assessed at such a sum as, with his poor-rate, made up the full gross amount of the corn-rent, the profit accruing to the occupiers beyond the amount of rent paid, and beyond the amount of the interest of capital employed, and of expense of cultivating lands, including compensation for the farmer's trouble and labour, and superintendence, ought to have been included in these assessments; and the appellant proposed to call evidence to prove the existence of such profit so accruing generally; the respondents, however, admitted such profits to have accrued generally. The Court did not allow this objection. It was further objected, that the corn-rent was not worth to the appellant any such sum as 368*l.*, he being liable in respect of such sum to the payment of land-tax and ecclesiastical dues beyond the parochial rates, and having further to do or provide for the duties of the incumbency; and this objection was not allowed, but the rate confirmed, subject to the opinion of the Court of King's Bench on the objections above stated. The case was argued at the sittings in banc after last term. — The judgment of the Court was delivered by PARKE J. This was a question between the rector of a parish and the farmers in it, as to the extent to which he, on the one hand, and they, on the other, ought to be rated. The tithes in the parish were extinguished, and the rector had a corn-rent or compensation in their stead. He was rated to the full extent of all he received, with the deduction only of what he paid for parochial dues. He claimed as additional deductions the amount of his land-tax, the amount of what he paid for ecclesiastical dues, (which would include tenths, synodals, &c.) and a compensation for performing or providing for the duties of his incumbency. The farmers were rated at the *bonâ fide* amount of the rack-rent at which the farms were letting or which they were worth to let, the tenants paying the corn-rent or compensation for tithe; and the rector contended that they ought to be rated in addition upon that corn-rent or compensation they paid him, and upon their share of profit beyond the rent. The great point to be aimed at in every rate is equality, and whatever is the proportion at which, according to its true rateable value, any property is rated, is the proportion in which every other property ought

rector, were rated upon the *bonâ fide* amount of the rack-rent paid by them to their landlords: Held, that the tenants ought not to be rated for a sum made up of the rack-rent paid to their landlords, and the corn-rent paid to the rector, but that they were properly rated on the amount of the rack-rent only: Held, secondly, that the rate was unequal, on the ground that the farmer was rated, not for the full value of the land, which comprised the landlord's and tenant's profit, but for the rack-rent, which was the landlord's profit only, while the rector was rated for the full value of his corn-rent: Held, thirdly, that in estimating the amount at which the rector ought to be rated, the land-tax ought to be deducted from the full amount of his corn-rent, provided the tenants of the other lands in the manor paid the land-tax without being allowed for it by the landlord, but not if such allowance was made: Held, also, that allowance ought to be made to

the rector for ecclesiastical dues, which were a charge upon the rectory, but not for the expenses of providing for the duties of incumbency, because they were a personal charge only.

to be rated. The first thing upon every rate, therefore, is to ascertain the true rateable value of every property upon which the rate is to be imposed, and the next to see, upon what proportion of that value a rate is, in fact, imposed. In the case of land, the rateable value is the amount of the annual average profit, or value of the land, after every out-going is paid, and every proper allowance made; not, however, including the interest of capital, as the sessions have done, for that is a part of the profit. Tithe is an outgoing, and therefore the corn-rent or compensation for tithe in this case is not to be added to the amount upon which the farmer is rateable; and in respect of that portion of the annual profit or value which consists of tithe or corn-rent, the rector is himself to be assessed. We think, therefore, that the sessions were right in overruling the first objection. The second objection was, that the farmer's share of profit ought to have been rated, or, which is the same thing, that the appellant should have been rated proportionably less; and that objection should, in our opinion, have prevailed. Of the whole of the annual profits, or value of land, a part belongs to the landlord in the shape of rent, and part to the tenant; and whenever a rate is according to the rack-rent (the usual and most convenient mode), it is, in fact, a rate on a *part* of the profit only. It must, therefore, in the next place, be ascertained what proportion the rent bears to the total annual profit or value, and that will shew in what proportion all other property ought to be rated. If, for instance, the rate is one half or two thirds of the total annual profit or value of land, the rate on all other property should be on a half or two thirds of its annual value. In this case it is clear, that there was a share of profit received by the tenant upon which there has been no rate, and, in that respect, the farmers were assessed in a less proportion of the true annual profit or value than the appellant. The sessions were therefore wrong in disallowing this objection, and they ought to ascertain the ratio which the rent of land bears to its average annual profit or value, and assess the appellant for his tithe-rent in the same ratio. The last objection was, that the appellant ought to have had the land-tax, ecclesiastical dues, and the expenses of providing for the duties of incumbency deducted. As to the land-tax, that is always in practice paid in the first instance by tenants; and whether it is to be deducted or not in this case, must depend upon the answer to a previous question, whether the tenants in the parish deduct it from the rents specified or not. If they do, the landlord pays it, in effect, out of the rent he receives; and the appellant, to be on the same footing, must do the same; in that case it must not be deducted in making the rate on him. But if the tenants pay the specified rents and the land-tax besides, then they have, in effect, not been rated upon that portion of the annual profit or value with which the land-tax is paid, but upon a part of the residue only, after deducting the land-tax. Upon this supposition the appellant must also be rated in a proportionate part of his profit, after deducting the land-tax. The ecclesiastical dues ought to be allowed, because they are payable by the appellant in respect of his rectory, and the profits of the rectory constitute the only fund out of which they can be paid; but the expenses of providing for the duties of incumbency ought not to be deducted, because those duties are personal, and ought to be performed personally by the incumbent. *The last objection, therefore, ought to prevail in part. The case*

must, for these reasons, be sent back to the sessions, who must amend the rate, acting as nearly in conformity to the principle here laid down as their means of investigation will admit; a precise and accurate application of it is, we are well aware, impracticable.

25. *Rex v. Chaplin, H. T. 1 W. 4.*—1 B. & Ad. 926.—This was an appeal against a rate made in *January* 1830, for the relief of the poor in the parish of *Tetney*, in the parts of *Lindsey* in the county of *Lincoln*, wherein the appellants were rated in the sum of 14*l.* 19*s.* 10½*d.* upon the annual rental of 299*l.* 17*s.* 6*d.*, as occupiers of land taken for the *Louth* Canal, towing-paths, &c. with the profits arising therefrom. The sessions confirmed the rate, subject to the opinion of this Court on the following case:—By an act of 3 G. 3. c. 39. (declared to be a public act) certain commissioners were empowered to make a navigable cut or canal from the river *Humber* to the river *Ludd*, and to continue the same from thence to the town of *Louth* in the county of *Lincoln*, and for that purpose to borrow money upon the security of the tolls created by the act. The commissioners, in pursuance of the above provisions, borrowed 28,000*l.* at 5 per cent. interest, and expended the same in making the canal. This act was repealed by an act of the 9 G. 4. c. 30. (also declared to be a public act), and the canal, with the ground and soil thereof, and all the towing-paths, locks, and appurtenances, were by the last-mentioned act vested in commissioners therein named, who, in pursuance of a certain provision therein, demised the canal, and the ground and soil thereof, together with all the tolls, dues, proceeds, and forfeitures imposed and authorized by that act, to the appellants, for a term of forty-eight years from the 24th of *June* 1828, subject to the payment thereof of the interest on the above sum of 28,000*l.*; in default of which payment it was provided that the commissioners might require the collectors to pay such interest out of the money that might then be in, or might thereafter come to, their hands, and the collectors were to be allowed such payments in account with the lessees, the tolls being appropriated in the first instance to the satisfaction of this charge. The canal passes through twelve parishes, and one fifth of the whole extent lies in the respondent parish of *Tetney*. The lessees are further liable to all the expenses of maintaining and repairing the canal and its works, collectors' salaries, &c. (The case then went into details as to the expenses of the canal, the receipts, and the mode of collection.) The annual earnings of the whole canal are 3,418*l.* 8*s.*, of which the proportion corresponding to the length of the canal in *Tetney*, namely, one fifth, would be 683*l.* 13*s.* 7*d.* The annual earnings of the canal in *Tetney* are 788*l.* 17*s.* 3*d.*, or three thirteenths of the earnings of the whole canal; upon which three thirteenths the present rate was imposed. If the Court should be of opinion that the rate ought to be imposed on one fifth, instead of three thirteenths, the rate was to be reduced accordingly. The appellants claimed deductions on account of the following sums:—1400*l.*, being the interest on the mortgage debt of 28,000*l.*, and 341*l.* 16*s.* 9½*d.*, as the reasonable profit to a tenant to occupy at ten per cent., on 3418*l.* 8*s.*: a further deduction on account of average annual expenses for repairs, &c. which, on the whole canal, amounted to 881*l.*, and of which 163*l.* were incurred in the appellant parish; and a further sum on account of poor's rates and other parochial taxes,

Commissioners of a navigation, having borrowed 28,000*l.* on mortgage, and being still in want of funds, agreed to let the navigation and tolls for ninety-nine years, the lessees undertaking to make certain advances, (which he did) and to pay the interest of the 28,000*l.* Part of the term having expired, and the validity of the agreement being doubted, an act was passed reciting that that agreement had been entered into bona fide, had been beneficial to the public, and would be so if continued: it therefore empowered the commissioners to lease the navigation and tolls (which, however, were lowered) for the remainder of the term, to the persons entitled under the former agreement; and enacted, that they should pay the interest of the 28,000*l.* yearly to the mortgagees; in default of which the commissioners might require the toll-collector to pay such interest to the mortgagees out of the

monies in his hands. On appeal against a rate laid upon the lessees in respect of the navigation : Held, that the interest paid by the lessees was in substance a rent, and that the rate ought to be calculated upon it : and that the lessees were not occupiers under a beneficial lease, though the interest was only 1400*l.* a year, and the annual earnings at the time of making the rate were 3418*l.* (from which, however, about 1000*l.* was to be deducted for repairs, &c.) ; one year's value being no criterion, and there being no proof that the rent was unduly small.

which, on the whole extent of the canal, amounted to about 100*l.* If the Court should be of opinion that the appellants were entitled to any of these deductions, the rate was to be reduced accordingly. The preamble of the act of 9 *G.* 4. recited, that the commissioners under the former act, having borrowed the said sum of 28,000*l.*, and having incurred considerable expense, and being in want of funds, entered into an agreement with *Charles Chaplin, Esq.*, (for the good of the navigation, and as the only means of raising the necessary funds,) that the canal and navigation, subject to the orders of the commissioners as in the act mentioned, with all the tolls arising from the said navigation, and all the estate and interest of the commissioners therein, should be vested in the said *Mr. Chaplin*, his executors, &c., for ninety-nine years ; and he thereby agreed to accept the trust, do the works to be ordered by the commissioners, pay all the interest of the money borrowed at five per cent. by half-yearly payments, and make some other advances. The statute then recited, that doubts had been entertained as to the authority of the commissioners to make such agreement : that the said *C. C.*, and those claiming under him, had, after the making of the said agreement, and on the faith of it, expended considerable sums (in particular two sums of 7000*l.* and 4000*l.*) on the navigation : that the agreement was entered into by the commissioners *bonâ fide* for the benefit of the public, and was, in fact, beneficial to the public at the time it was made ; and the benefit accruing therefrom to the said *C. C.*, and those claiming under him, had not been disproportioned to the risk run by the said *C. C.* : that the agreement had been acquiesced in by all parties for nearly fifty-one years, and it would be for the benefit of the public that the same should be sanctioned for the remainder of the said term of ninety-nine years, but subject to a reduction of the tolls of the navigation by one half as to some articles, and one third as to others ; the commissioners under the new act were therefore empowered to grant to the persons entitled to the beneficial interest under the above agreement, and their executors, &c. a lease of the navigation and tolls for forty-eight years, being the residue of the term of ninety-nine years in the agreement mentioned, provided that the lessees for the time being should be subject to all the payments, rules, regulations, &c. mentioned in the former act. Under this enactment, the demise stated in the case was made.—*LORD TENTERDEN C. J.* The rate must go back to be amended. In the cases of this kind which have hitherto occurred, the canal has been in the hands of the original proprietors, and the object has been to ascertain what it would be worth to let, which has sometimes been difficult. But here the canal is actually let, and, therefore, there is no occasion to speculate on that point. The 1400*l.* interest is in effect a rent, though there is no actual payment to the lessors ; the tolls are appropriated to the purpose stipulated by them, and, in case of default, they may call upon the collectors to make good the payments out of the monies in their hands. It was contended that this was a beneficial lease ; but taking the several recitals of the act 9 *G.* 4. c. 30. together, I think that does not appear. The commissioners, in the first instance, assigned the canal to *Mr. Chaplin* for the good of the navigation, and as the only method for raising the money necessary for putting it into repair ; and the act recites, that he and those claiming under him did in fact lay out considerable sums of money upon it ; that the bargain was beneficial to the public,

and is likely to be so if continued; and it states that the benefit as yet derived from it by the lessees has not been disproportioned to the risk originally run; but, lest the lease should become too beneficial during the remainder of the term, the tolls are reduced. I think, then, there is no ground for saying that the 1400*l.* is not such a sum as may be properly considered the value of the navigation; and as three thirteenths of the profits arise in the parish of *Tetney*, the rate must be laid on three thirteenths of 1400*l.*—LITTLEDALE, J. I am of the same opinion. As to the argument which is drawn from the amount of present earnings, it might as well be said that where a farm is let, the year's profit on each particular crop is to be taken into consideration in fixing the rate. In the case of a property so lately let, the actual rent is the best criterion of value: perhaps it might be otherwise if the letting had been ten or twenty years ago, and it appeared that the profits had very materially increased or diminished since.—TAUNTON J. The tolls of a canal, like the profits of land, are to be valued at what they would let for *communibus annis*: and it has, I believe, been held that no difference is to be made because in one particular year there was a loss. In ascertaining what a property is worth to let, the best criterion in general is what it actually does let for. When, therefore, in this case, the value was estimated from the earnings of a single year, a wrong basis of calculation was taken. Here is a rent spreading itself over a period of forty-eight years, and the produce in one is no proof what the average will be. Here, in point of form, there is no rent, but a payment of interest: it is, however, in the nature of rent. Instead of the lessee's paying 1400*l.* a year to the proprietors, and their handing it over to the mortgagee, the lessee pays it to the mortgagee at once.—PATTESON J. Where the land is not actually let, it becomes necessary to calculate what a tenant would pay for it; where it is let, the actual rent is the criterion, unless it can be clearly shewn that that is too small. But that is not ascertained by enquiring whether the property was more or less beneficial in a particular year. Rate to be amended.

26. *Rex v. Chelmer and Blackwater Navigation, E. T. 1 W. 4.*—2 B. & Ad. 14.—Upon an appeal against a rate for the relief of the poor of the parish of *Heybridge* in the county of *Essex*, dated the 20th of May 1830, whereby the company of proprietors of the *Chelmer* and *Blackwater* navigation were rated and assessed upon the annual rental of 800*l.* as occupiers of wharfs, granaries, dock, and land used for a navigation and towing-path, the court of quarter sessions amended the rate by reducing the sum of 800*l.* to 187*l.* 3*s.*, subject to the opinion of this Court on the following case:—By an act of the 33 G. 3, c. 93. entitled, “An Act for making and maintaining a navigable communication between the town of *Chelmsford*, or some part of the parish of *Springfield* in the county of *Essex*, and a place called *Collier's Reach* in or near the river *Blackwater* in the said county,” certain persons therein named and their several and respective successors, executors, administrators, or assigns were united into a company by the name of “The Company of Proprietors of the *Chelmer* and *Blackwater* Navigation,” and were authorized to purchase lands, tenements, or hereditaments for the use of the said navigation, and for other the purposes mentioned in the act, and to make and maintain navigable and passable for boats, barges, and other vessels, the said navigation

By an act for making a navigable communication between two places therein mentioned, a company was formed, and authorized to purchase lands, &c. for the use of the navigation, and to make and maintain the same. The act then directed that the company should be rated and charged to all parliamentary and parochial taxes, rates, and assessments for any lands to be

purchased or taken, or warehouses or other buildings to be erected by them in pursuance of that act, *in the same proportions as other lands and buildings adjoining to or lying near the same were or should be rated and charged :*

Held, that the company were liable to be rated for their lands and buildings at the same value as other adjacent lands and buildings, and not according to the improved value derived from their being used for the purposes of the navigation.

through the several parishes therein mentioned. And in the same act it is provided "that the said navigation, or any works whatsoever to be made by virtue of the powers of this act, shall not be subject to the control, direction, survey, or order of any commissioners of sewers, or to any law or statute relating to sewers, any thing herein contained, or any former law or statute to the contrary notwithstanding. And the said company of proprietors shall and may from time to time hereafter be rated and charged to all parliamentary and parochial taxes, rates, and assessments, for or on account of any lands or grounds to be purchased or taken, or of any warehouses or other buildings to be erected by them in pursuance of this act, *in the same proportions as other lands, grounds, and buildings adjoining to or lying near the same are or shall be rated and charged.*" In pursuance of the powers of this act, the company of proprietors made and completed the navigation before described, by deepening and cleansing, and in some places widening the channel of the river *Blackwater*, and by occasionally making cuts or deviations from the line of the river. These additional cuts, and the towing-paths along the whole line of navigation, were made upon lands purchased and held by the company under the powers of the act. It was admitted on the hearing of the appeal, that for these new cuts and the towing-paths, or the profits arising from them exclusively, and not for any profits arising from the old bed of the river, the appellants were rateable. In the parish of *Heybridge* the new cut leading to what is termed the sea-basin is something more than a mile and a half in length. In the other parishes through which the navigation passes the new cuts are of much less magnitude than in the parish of *Heybridge*, having been taken for the purpose of making locks and weirs, the expenses of keeping up which are much greater than the profits accruing to the company in those respective parishes, from the land so taken, exclusive of the old bed of the river. If the company were to be rated for the new cuts, and for the wharfs and buildings occupied by them in the parish of *Heybridge*, according to the profits arising to them therefrom within the parish, the Court found the sum of 187*l.* 3*s.* ought to be the sum inserted in the rate instead of 800*l.* But if the company were to be rated for their new cut, wharfs, and buildings in the parish, without reference to navigation profits, in the same proportions as other lands, grounds, and buildings adjoining thereto in the parish of *Heybridge*, then the Court found that the sum of 35*l.* ought to be inserted in the rate instead of 800*l.* The question for the opinion of the Court was, whether the appellants were exempt from any rateability in respect of the land taken and used by them for the purposes of the navigation as aforesaid, beyond the value of the adjoining land? If so, then the sum to be inserted in the rate was to be reduced to 35*l.*; otherwise, to stand at 187*l.* 3*s.* —LORD TENTERDEN C. J. in the same term delivered the judgment of the Court. The question in this case is upon the meaning of the words, "in the same proportion as other lands, grounds, and buildings adjoining to, or being near the same, are or shall be rated or charged;" whether, in assessing the lands and buildings of the company, their value is to be estimated according to the value of other adjoining lands and buildings, or the assessment is to be made upon that proportion of the actual value (say three-fourths or

four-fifths), upon which the other lands and buildings are assessed. I propose to consider the matter, first, without reference to any of the cases that bear upon the question; and, secondly, with reference to those cases. The first thing that strikes the mind upon the latter construction of the act is, that it supposes the legislature to have contemplated, that property is not rated according to its actual value, but according to some part only of that value. In fact, this mode of rating is sometimes adopted; but I conceive the law generally assumes that all rateable property is to be rated according to its actual value. The statute of *Elizabeth* does not point to any other estimate. If all the property of the same kind in a parish is rated only upon some definite part of its actual value, the effect is the same as if the rate were upon the entire actual value, and no occupier of such property has any ground of complaint. If, in making the assessment, the rent is first considered, and then the rate upon land is made on a certain part of the rent, and the rate upon houses on some greater part of, or the whole rent, which is sometimes done, this is not properly a rating upon a part only of the value, but upon all the supposed real value; because, in estimating the value of land, it may be reasonable to make a greater deduction from the rent, than is made from the rent of houses, on account of the greater expense (of cultivation and repairs) in the case of lands than in the case of houses. The act of parliament upon which the question arises, was passed for the purpose of making a river navigable. It was foreseen that this object could not be effectually accomplished without making, in some places, new cuts and channels deviating from the ancient course of the river, erecting locks or weirs in some places to overcome the inconvenience of natural falls and changes of level, and erecting buildings for the residence of lock-keepers or collectors of tolls, or for warehousing merchandize, and power is therefore given to the company to purchase land for these purposes. It was well observed in the argument at the bar, that the ground taken for locks or weirs would be productive of no value in the hands of the company, there being no lockage dues, but only a mileage toll. The company are not rateable in respect of the ancient course of the river, for the soil thereof is not vested in them, nor are they properly the occupiers thereof, but entitled only to the privilege of using it in the nature of an easement. No rate can be imposed upon tolls *eo nomine*, so that if there should happen to be in any parish no new cut or channel made, nor any profitable building erected, but land should be bought for locks and weirs which are in themselves unprofitable, it might be contended that the company would not be rateable at all for the land so taken, and the rateable property in the parish would be pro tanto diminished, and the parish therefore would lose by the project authorized by the statute; while in another parish where land should be taken for a new cut or channel, or the erection of a profitable building, the amount of the mileage toll for passing along such new cut or channel, or the profit of the building, might be greater than the value of the neighbouring land, or the profit of similar buildings, and in this instance the parish would gain by the project. Whereas, if the land taken and buildings erected throughout the whole line *are estimated and rated according to the value of the adjoining land and similar buildings*, no parish will either lose or gain by the project,

but every parish will be in the same situation as if the act had not passed, or nothing had been done under it. So, also, if the whole undertaking should prove unprofitable, as some projects of this kind have done, and the amount of the mileage toll, or receipts of the buildings erected, should be less than the value of the neighbouring land or of similar buildings, no parish would become a loser by the diminution of the value of rateable property within it, at whatever period of time such diminution might happen to take place. And if we suppose the legislature to have intended to prevent loss or gain to the parishes, and to leave all in the same state and condition as if no land were taken or building erected by virtue of the act, we must construe the words in question to mean, that the land and buildings of the company shall be estimated for the purpose of rates, according to the value of other land and buildings adjoining or near: that the value shall be taken according to that rule, without regard to any increase or diminution of actual value. And the words used may certainly very well admit of this sense and construction. It may be observed, also, that this is an affirmative clause of the act, intended to designate the rating; and if it mean only that the company shall be rated on the same part of the value of their property as the adjoining lands and buildings, it will be quite useless and ineffectual, because a rate on a different part, whether greater or less, would be bad, being manifestly unequal and unjust. I come now to advert to the decided cases. The first in order of time is the case of *The Leeds and Liverpool Canal Company* (a). The acts of parliament upon which that case arose were passed, and the case came before the Court before it was established that navigation tolls are not rateable *eo nomine*; the decision does not furnish any authority on the present subject; but it seems probable that the case led the way to the rule against rating tolls, that was soon afterwards established. The next case is the case of *Saint Mary, Leicester* (b), which came before the Court after it had been settled that tolls *per se* were not rateable. That arose upon an act passed in the same session of parliament as the act in question, and contains a similar clause as to rating, following also, as this does, the clause of exemption from the jurisdiction of the sewers. The sessions reduced the rate upon the company to the value of the lands and buildings belonging to the company, in proportion to the lands and buildings adjoining, exclusive of the tolls. This Court confirmed the order, being of opinion that tolls *per se* were not rateable, and that there was no doubt, upon the construction of the act, that it had prescribed a special and definite mode of ascertaining the value of the land, which excluded the consideration of the tolls. It is true, that that act contained also a prior clause on the subject of rating, which might contribute to shew the intention of the legislature; but it seems that either clause, if taken alone, must have received the same construction, as to land, which alone is mentioned in the first clause, warehouses and buildings being mentioned in the second only. Next came the case of the *Grand Junction Canal Company* (c). In that case there were two acts of parliament: the first contained a clause similar to the present, certainly not more favourable than the present, to the construction which prevailed. The clause in the latter act rather raised a doubt and uncertainty: and

(a) 5 East, 325.

(b) 6 M. & S. 400.

(c) 1 B. & A. 289.

was evidently less favourable to the construction adopted by the Court. It was argued there as here, that the word "proportion" meant *part* of the actual value; but the argument was repudiated by the Court, and the assessment allowed was upon the same principle as that proposed by the sessions in the present case, in reducing the rate to 35*l*. The next case is that of *St. Peter the Great* (a). That case arose upon two acts containing clauses similar to those in the two acts relating to the Grand Junction Canal; and the Court held, that the improved value of the land, by the receipt of tolls, could not be taken into consideration. The last case is that of *King's Swinford* (b). There were several acts of parliament, the last of which contained a clause like the present. But no question was made as to the construction or effect of that clause. The only question was, whether the company were rateable in *King's Swinford*, according to the value of the tolls earned in that parish, or upon that proportion of the tolls earned on the whole line which the length of the canal in that parish bore to the length of the whole line; and the Court very properly decided that the rate should be according to the amount of the earnings in the particular parish. Upon this view of the cases, it appears that there is not any decision against the reduced rate proposed by the sessions in this case. And the two cases of the *Grand Junction Canal* and *St. Peter the Great* are plain authorities in favour of it, there being no substantial difference in the language of the statutes. In this case, therefore, the rate must be reduced to 35*l*., that is, to the value of the land and buildings of the company, estimated according to the value of the adjoining lands and buildings, and not according to their actual productive value to the company.—Rate reduced accordingly.

27. *Rex v. Sedgley, E. T. 1 W. 4.*—1 B. & Ad. 65.—By a rate for the relief of the poor of the parish of *Sedgley*, in the county of *Stafford*, made the 12th of May 1829, the Earl of *Dudley* was rated as the occupier and proprietor of land and lime works at 41*l*. 13*s*. 4*d*., being on an annual value of 1000*l*. Against this rate he appealed, on the ground that he was overrated in respect of the yearly value of the lime works and land by him occupied in the parish; and also, that under the denomination of lime works were included certain mines of limestone, for which he was not liable by law to be rated. The Court of quarter sessions quashed the rate, subject to the opinion of this Court on the following case:—The appellant is the owner and occupier of lands in the respondent parish of *Sedgley*, containing certain strata of limestone, and also of the works hereinafter mentioned, by and out of which the limestone is raised. The strata of limestone under these lands lie in a sloping position, and one stratum distinct and a considerable distance from the other, in the same manner as coal, ironstone, &c. The strata frequently crop out or terminate at the surface, and deepen in the opposite direction. Those parts of the strata which cropped out or terminated at the surface were worked by the appellant and his predecessors in quarries by daylight, or open work, following the course of the strata as far as was practicable. The continuations of these strata, which were in the course of being worked at the time the rate was made, lie forty or fifty yards below the surface of the

The express mention in the statute 43 Eliz. c. 2. s. 1. of coal-mines is a virtual exclusion of all other mines, and consequently other mines are not rateable to the relief of the poor.

Whether an excavation in the earth, from which limestone is obtained, be a mine or not, is a question of fact. But where the sessions found that the limestone was obtained and raised by sinking shafts perpendicularly down to the

(a) 5 B. & C. 473.

(b) 7 B. & C. 236. Ante pl. 13.

stratum, which lay forty or fifty yards below the surface of the ground, and that the stratum was worked by roads and gate-heads, and the stone raised to the surface by machinery, or carried under ground to a tunnel (which is the mode used in obtaining coal and ironstone), the Court held, that the property was a limestone mine, and therefore not rateable to the relief of the poor.

ground, and are worked in large excavations by means of pit-shafts, steam-engines, &c., in the same way as coal, ironstone, and other minerals, and no part of the limestone is now gotten in quarries or by open work. The produce is in part drawn up the pit-shafts, and in part sent off by an under-ground canal or tunnel. The only difference between these, which the appellant contends are limestone mines, and which are described in the rate as lime works, and coal and ironstone mines, is the position of the strata, the material gotten out, and the greater excavations in the former than in the latter. The only way into these mines or works is down the shafts, or through the tunnel, which is wholly underground, a great part of it being upwards of fifty yards below the surface of the ground, the deepest part being at its junction with that part where the limestone is gotten. The limestone is gotten in large excavations made in the direction in which the strata run; which excavations communicate by headways or gateroads with the bottom of the shafts, and the works are lighted by candles or lamps, no part being open to daylight. The working requires experience, and is carried on by persons who are brought up to the occupation, and are called limestone miners or limestone getters, as often one as the other. The limestone is conveyed along railroads, from the part of the works where it is gotten, through the gateroads; one part to the bottom of the pit-shafts, and the other part to the canal or tunnel. That which is taken to the bottom of the pit-shafts is drawn up by the steam-engines, and the other part is sent off in boats along the tunnel. By far the greater portion of the limestone gotten by the appellant is sold in its raw state to the iron-founders for smelting iron; but a small portion, (which, by agreement is taken at a hundredth part of the whole), is burnt into lime by the appellant on his own land. There is no difficulty in finding the limestone, the pits being sunk, engines erected, and levels and tunnels made, and the mines or works opened and in operation. The profits of the appellant are certain, though subject to variations in consequence of frequent breakings off of the strata, and their being thrown into different directions: these increase the difficulty and expense of working, and render fresh openings necessary. Limestone strata were lately found and worked in an adjoining parish to *Sedgley*, at a depth of more than one hundred yards below the mines of coal and ironstone. The coal and ironstone, in that case, were first gotten, and afterwards the limestone was worked by means of the same pit-shafts, which were sunk down to it. "Mines of limestone" are expressly mentioned in acts of parliament relating to places in the neighbourhood. — LORD TENTERDEN C. J. delivered the judgment of the Court. We are of opinion that the property in question is not rateable, and that the decision of the Court of quarter sessions is right. The cases on the subject were all very properly quoted in the argument at the bar, and, therefore, I do not think it necessary to refer again distinctly to them. I take it to be now established as law, by the several decisions, that the expression of coal mines in the statute 43 *Eliz.* has the effect of excluding all other mines, according to the maxim "expressio unius." The dicta and opinions of several Judges before whom questions of this nature have been brought, may, I think, be considered as expressing the reasons by which they supposed the legislature to have been influenced in making coal

mines rateable, and coal mines only. I must confess, that much that has been thus said is by no means satisfactory to my own mind, and that I feel great difficulty in an endeavour to reconcile the several dicta with each other. But it is not necessary to do this. The rule of construction has been established and acted upon for a long time, and ought to be adhered to, unless we could say positively that it is wrong, and productive of inconvenience. I can find, certainly, no inconvenience in the rule; an attempt to alter or to depart from it would introduce a new subject of litigation and expense. Considering, then, as we do, the rule of construction to be established, the only remaining matter or question will be, whether the property or limestone which has been rated is properly a limestone mine; and this, perhaps, is rather a question of fact than of law. The description of the manner in which the stone in question is obtained and raised, namely, by sinking shafts perpendicularly down to the stratum, which lies considerably below the surface of the ground, and then working the stratum by roads and gateheads, with the necessary provision for air, and raising the stone to the surface by machinery, or carrying it under ground to a tunnel, is the exact description of the present usual mode of mining; of the mode used in obtaining coal, and of the mode used in obtaining ironstone. Ironstone obtained in this manner, has been held not to be rateable; why, then, should limestone be? What difference is there between the two? The only difference that has been suggested is, that ironstone contains a quantity of metal, and is procured for the sake of the metal it contains. But, if the existence of metal be necessary to constitute a mine, salt works, from which salt is obtained in the way that this stone was obtained, will not be mines, nor, indeed, will coal works be mines, though, in the statute itself, they are so called. And to deny the character of a mine to the works in question would, as it appears to us, be to depart from the ordinary and proper meaning of that word in the *English* language. We are therefore of opinion, that the order of sessions must be confirmed.—Order confirmed (a).

28. *Rex v. Aire and Calder Navigation*, H. T. 2 W. 4.—3 B. & Ad. 139.—The appellants were rated in 1828, to the relief of the poor of the township of *Brotherton*, in the West Riding of *Yorkshire*, as the owners and occupiers of “a cut or canal, and that part of the river *Aire* lying within the township of *Brotherton*; the dams, locks, and weirs, and tolls, dues, or rates.” They appealed against the rate, to the sessions for the Liberty of *St. Peter of York*, and a case was thereupon stated for the opinion of this Court, which, on argument, decided that the appellants were not rateable as owners or occupiers of part of the river. (b) Another rate having in the mean time been made in the said terms, and appealed against, the

Persons in whom the navigation of a river is vested, but who have no interest in the soil, are not rateable to the poor for a dam which upholds the water of such river, and renders it navigable.

(a) In *The Case of Mines*, Plowd. 333., it is said in argument, that there are two kinds of mines; viz. mines royal, consisting of, or containing, gold or silver; and base mines, “which consist only of base metals, or base substances, as copper, tin, lead, iron, or coals, not having in them gold or silver.” Mines of coal, iron, and stone are mentioned, Year Book, 17 Edw. 3. 7 b. (*Viner's Abr.* tit. *Waste* (D).); mines of metal, coal, or the like, in *Co. Litt.* 53 b.; alum mines, in stat. 21 Jac. 1. c. 3. s. 11. See a distinction between mines and pits, 1 *Vin. Ab.* tit. *Mine*, (A), from *Clavering v. Clavering*, *Cas. Ch. temp. King*.

(b) *Rex v. The Aire and Calder Navigation Company*, 9 B. & C. 820. Ante, pl. 21.

sessions, after the above-mentioned decision, (namely, in *January*, 1830,) amended this latter rate by striking out the words "and that "part of the river *Aire*," subject to the opinion of this Court upon the following case:—The rivers *Aire* and *Calder* were rendered navigable by the statute 10 & 11 W. 3. c. 19., amended by 14 G. 3. c. 96., 1 G. 4. c. xxxix., and 9 G. 4. c. xcvi. The river *Aire* forms the boundary between the respondent township and those of *Ferry-bridge* and *Knottingley*, as far as the mills after-mentioned. Opposite these it divides itself into two branches, the northern branch separating *Brotherton* from *Knottingley*, the southern passing through *Knottingley*. On the *Brotherton* side of the northern branch is an ancient mill called *Brotherton Mill*, with a mill dam across that branch of the river, forming in part the head and fall of water by which the mill, when in operation, was worked. Half of the dam is in *Brotherton*, and half in *Knottingley*, abutting on one side upon the mill, on the other upon land held to the use of the undertakers. The mill and dam existed before the navigation, and were leased to trustees for the undertakers of the navigation, fifty years ago, but are now dilapidated, out of use, and unoccupied. On the *Knottingley* branch of the river are other ancient mills, (vested in trustees for the undertakers in fee,) to which belongs a second dam, extending across the southern division of the river. This, the *Knottingley* dam, lies near the *Brotherton* dam before described, and the two together form a pond or head of water. Since the *Brotherton* mills were dilapidated, the *Knottingley* dam has been substantially repaired by the appellants, for the use of the *Knottingley* mills and of the navigation in common. A side cut, mentioned in the rate, but concerning which no dispute arose, was made by the undertakers, with a lock, in the respondent parish, for passing vessels from the level above to that below the *Brotherton* and *Knottingley* dams. There is a similar cut, for the same purpose, on the *Knottingley* side. The water of the river *Aire* is held up, and the river rendered navigable, by the above-mentioned dams, from the lock in the side cut in *Brotherton* township, for 9823 yards upwards, within which distance it runs through six townships, (including *Brotherton*,) each maintaining its own poor. No tolls or dues are specifically taken for passing a dam or lock; the only toll is an equal mileage toll, charged according to the length of river or canal, or both, actually navigated, and whether any locks or dams be passed or not. No tolls are actually received in the respondent township. The appellants contended that they were rateable only in respect of the canal and lock in *Brotherton*. The respondents maintained, that as the water of the river was upheld, and the river made navigable, for 9823 yards, by the two dams above-mentioned; and as one half of one of the dams was in the respondent township, they were entitled to rate the undertakers for one fourth of the tolls upon the whole line so made navigable, or at least upon that portion of the line which lay within their township. The sessions considered the appellants rateable for a fourth of the tolls upon the whole line, as well as for the cut and lock in *Brotherton*.—Lord TENTERDEN C.J. I am of opinion that this rate must be amended by reducing it to the amount assessed upon the cut and lock. This is an attempt to evade the decision of the Court in the former case of *Rex v. The*

Aire and Calder Navigation Company.(a) We there held that the undertakers were not rateable as occupiers of the bed of the river, having merely an easement in it. No rate, then, could be laid upon them for the water of the river made navigable by them; and if so, none could be imposed in respect of the dam; for to rate the dam because it keeps up the water, would be equivalent to rating the water itself. If the water cannot be rated, neither can the dam which holds it up.—LITLEDAL J. It has been held that the company were not rateable for the river, and I therefore think they are not so for the dam.—TAUNTON J. It has been contended that because the water of this river was holden up and made navigable for 9823 yards by dams, one of which was partly situated in the respondent township, the undertakers might therefore be rated upon this dam for a proportion, at least, of the tolls accruing upon the water so upheld. But I think this is a vicious principle, and at variance with decided cases. It might as well be said that a reservoir which supplies water to a district nine or ten miles in extent, or a lock which acts as a dam, or a steam-engine employed to raise water from a lower to a higher level, is rateable in respect of the whole distance to which water is supplied by any of these contrivances, and the profits accruing from that supply; propositions which cannot now be maintained.—PATERSON J. It is very clear that such a rate as this, if it may be imposed, is in effect the same as rating the water. Suppose this were a canal, it would then be rateable all along the line of navigation, to the parishes through which it passed, and in that case the rate evidently could not be laid upon the dam. Can it then be imposed upon the dam here, because the line of navigation is not rateable? I agree with my Lord that this is merely an attempt to evade the former decision of the Court.—Rate sent back to be amended, by reducing it from 15*d*l. to 15*l*. 16*s*., the amount chargeable upon the canal and lock.

29. *Rex v. Brettell, E. T. 2 W. 4.*—3 B. & Ad. 424.—On appeal against a rate made for the relief of the poor of the parish of *Oldswinford* in *Worcestershire*, whereby the defendants were rated, amongst other property, at the sum of 4*l*. 10*s*. for three clay-pits; the sessions confirmed the rate, subject to the opinion of this Court on the following case:—The appellants were the owners and occupiers of lands in *Oldswinford*, containing strata of a substance called “Glass-house Pot Clay,” and “Fire Brick Clay,” and the term clay-pits was used in the rate to designate the excavations under-ground from which the clay is extracted, and the perpendicular shaft sunk from the surface of the land for the purpose of raising the clay, which is done by a steam engine, whinsels, and other mining apparatus. These, and similar works, are sometimes called clay-pits, and sometimes clay-mines; and, in some local acts of parliament, they are referred to by the words “mines of glass-house pot clay” and “fire-brick clay.” These excavations and shafts are like those made for working coal and metallic mines, and the clay is raised in the same manner as coal out of a coal mine. Headways are driven for this purpose. The shafts are forty or fifty yards deep. The workmen are sometimes called clay getters, and sometimes miners. In some places the clay crops out at the surface,

Appellants were rated to the poor for clay-pits which were excavations under ground, from whence glass-house pot-clay, and fire-brick clay were extracted. A perpendicular shaft was sunk from the surface of the land, for the purpose of raising the clay out of the strata, which was done by a steam engine and other mining apparatus: the excavations were like those which are made for

(a) 9 B. & C. 820. Ante, pl. 21.

working coal and metallic mines, and the mode of raising the clay was the same as that used in a coal mine. Held, that the pits so assessed were clay mines, and, therefore, not rateable.

in others it is got within a foot or two of the surface, and it has been found as low as seventy yards. It does not crop out on the appellants' lands, but the part which crops out elsewhere is a continuation of their strata. The clay has in some cases (but not on the appellants' lands) been dug out by open work to the depth of nine feet. It is found with strata of coal above it, and it is mixed with globules of iron-stone; but this is in small quantities, and is thrown away as refuse. The strata of clay are very hard, and cannot be got out without miners' tools, but it crumbles on exposure to the air. This clay, which is every where known by the name of *Stourbridge* clay, is able, when manufactured, to withstand intense heat, and is chiefly used for the making of glass-house pots, fire bricks, and crucibles. That which crops out and is got by open work, is used for common red building bricks, and for clay-pots, and has been rated for twenty years. The clay is not good for fire-bricks or glass-house pots at less than ten or fifteen yards from the surface. When raised to the surface, it is sorted and picked, and ground in mills, and afterwards tempered with water, and trodden, before it can be manufactured. These strata of clay are only found within a small circuit of land lying in *Oldswinford*, and extending a little way in an adjoining parish. The working is subject to some risk, and the profit is variable. The pits or mines in question have never been rated to the poor. If the Court should be of opinion that these clay-pits or clay-mines were not rateable to the relief of the poor, the rate on the appellants in respect of them was to be reduced by the sum of 4*l.* 10*s.*—Lord TENTERDEN C. J. I see no reason to depart from the opinion which I delivered in *Rex v. Sedgley*.^(a) The only difference between that and the present case, consists in the character of the commodity obtained. The mode of obtaining it is the same. Now that case establishes that, in order to determine whether an excavation in the earth constitute a mine or not, we are to look to the mode in which the article is obtained, and not to its chemical or geological character. Here, as in *Rex v. Sedgley*, the substance is obtained by what, in the ordinary, and indeed in every sense of the word is mining: that being so, these clay pits are mines, and consequently are not rateable to the relief of the poor.—LITLEDAL J. I think we are bound by *Rex v. Sedgley*, and that the mode in which the substance is obtained decides this question.—PARKE J. I also think we are bound by the authority of *Rex v. Sedgley*. That case was some time under the consideration of the Court; and the present is not in any material point distinguishable from it.—PATTESON J. I am entirely of the same opinion.—Rate reduced by the sum of 4*l.* 10*s.*

(a) Ante, pl. 27.

The owners of mills in the township of *H.*, in compensation for the loss of water occasioned to them within the township by an adjoining navigation, were allowed, by act of parliament, to take certain tolls at a lock

30. *Rex v. Aire and Calder Navigation*.—(Case of the *Hunslet* Mills).—*E. T.* 2 *W.* 4.—3 *B. & Ad.* 533.—On appeal against a rate for the relief of the poor of the township of *Hunslet*, in the borough of *Leeds*, in the county of *York*, whereby the defendants and one *James Atkinson* were jointly assessed in the sum of 27*l.* 12*s.* 4½*d.*, on a valuation of 110*l.* 9*s.* 6*d.*, the defendants' proportion being 6*l.* 18*s.* 1*d.*, the sessions confirmed the rate subject to the opinion of this Court on the following case:—The rate was on "Fulling mill, scribbling mill and corn mill, and tolls receivable in respect of them." The appellants are the owners of one-fourth part, and Mr. *Atkinson* the owner of three-fourths of the mills, which

are mentioned in the statute hereinafter recited as the *Hunslet* mills, and are situate in the township of *Hunslet*. At the time of making this rate they were, and still are, untenanted. By the 14 G. 3. c. 96. s. 77. after reciting that, to the end that a full compensation may be made to the several owners, proprietors, and occupiers of the several mills called *Nether* mills, *Hunslet* mills, &c., now standing and being upon the river *Aire*, for all the loss and damage which may be occasioned by the making, deepening, or altering any cuts, dams, locks, or other works of navigation, and the passing of boats and vessels by such mills, it is enacted, that it shall be lawful for the owner, farmer, or occupier of every of the said mills respectively for the time being, to demand and take for his own proper use of the master, owner, or person intrusted with the care of every boat, barge, &c., passing up or down the said river with any goods on board, for which any tonnage rates or duties shall be payable by virtue hereof, the sum of 1s. as a passage toll for passing the lock or locks next adjoining to the pond or head of water belonging to every such mill, for the loss of water to every such mill or pond respectively, and upon non-payment thereof to take out of the boat or other vessel of the party making such default, a reasonable distress of any of the goods on board, not exceeding 20s. in value, and to sell the same, tendering to the owner, &c. of such boat or vessel, upon demand, the overplus after deducting the said passage toll and the charges of sale. The appellants and Mr. *Atkinson* were at the time of making the rate, and still are, in receipt of the passage tolls given in the above section to the owners, farmers or occupiers of the *Hunslet* mills. The lock where the tolls have for many years been collected, being the lock next adjoining the pond or head of water belonging to the said mills, is situate in the township of *Leeds* and has been rated in that township as part of the *Aire* and *Calder* navigation, but not in respect of these tolls. In the course of the navigation adjoining to the said pond or head of water, vessels after passing along part of the river which there forms the boundary of the two townships of *Hunslet* and *Leeds*, go along a cut or canal called the *Knowstrop Cut*, which, as well as its towing-path, is wholly in the township of *Leeds*. The towing-path for the river navigation, as far as it extends, is in the township of *Hunslet*, but many vessels navigate the river without using the towing-path, and pass on the *Leeds* side of the river. The questions for the opinion of this Court were, first, whether such tolls were rateable; and if so, secondly, whether they were rateable in the township of *Hunslet*.—Lord TENTERDEN C. J. We are of opinion that this rate cannot be supported. The toll itself is clearly not a subject of rate; and if it were, it does not arise in *Hunslet*. Then can the owners of these mills be rated in respect of the toll as a compensation paid to them for their loss of water? They might have let the mills, reserving the toll to themselves; and if they had done so, could they have been rated on account of the toll? It appears to us that they cannot, in respect of this compensation, be considered as occupiers of any property in *Hunslet* producing a profit there. Suppose that instead of the toll, an annual rent had been given, or a sum in gross from which they derived an income? Could they have been rated in respect of that as profit arising from their property in *Hunslet*? The rule for

situate on the line of navigation, but in a different township: Held, that they were not rateable at their mills in *H.* in respect of the tolls so taken.

Lands purchased by voluntary contribution were conveyed to trustees, for the purpose of erecting thereon a Lunatic Asylum, and for such other purposes relative thereto as should be determined by the subscribers. The asylum was originally designed for parish paupers or other indigent persons, but the funds being insufficient, a limited number of affluent persons were afterwards admitted at certain rates of payment in proportion to their abilities. From this and other sources of revenue the trustees, after paying all the expenses of the establishment, had accumulated, in five years, profits to the amount of 2000*l.*, part of which had been laid out in buildings and purchases for the institution, and part continued to accumulate. All benefactors of 20*l.* or upwards were governors, and they exercised the entire control over the asylum and its funds. The trustees derived no personal benefit from the institution:

quashing the order of sessions must be made absolute.—Rule absolute.

31. *Rex v. St. Giles, York, E. T. 2 W. 4.—3 B. & Ad. 573.*—Upon an appeal by the trustees of the *York Lunatic Asylum* against a rate made for the relief of the poor of the parish of *St. Giles*, in the city of *York*, whereby the trustees were rated for and in respect of the said asylum; the sessions quashed the rate, subject to the opinion of this Court on the following case:—In 1774, a number of voluntary subscribers raised a fund for purchasing certain premises within the respondent parish, containing four acres two roods twelve perches, and by the conveyance thereof it was declared that the premises were so purchased “for the purpose of erecting thereon a “convenient house for the reception of lunatics, to be denominated ‘The Lunatic Asylum,’” and for such other intents and purposes relative to the said charitable undertaking as should be thought proper by the subscribers, or the major part of them. The purchase-money amounted to 828*l.* The conveyance of the property was taken in the names of seven trustees, which trustees and the survivors or survivor of them, and the heirs of such survivor were to stand and be seised of and in the same for the purpose of erecting thereon a house (as above stated), and any offices or other buildings commodious for the same, and for any other intent and purpose relative thereto, which should be ordered from time to time by the subscribers or the major part of them at a general meeting, or by any committee of such subscribers to be duly appointed at such meeting. The asylum was originally designed for lunatics being either parish paupers or members of indigent families; but the finances of the institution being inadequate to the maintenance of that description of persons only, a limited number of affluent patients were afterwards admitted at rates of payment in proportion to their abilities, with a view of providing a surplus from the payments by this class towards the support of the most necessitous. The asylum is now a large and flourishing establishment, having seventy-nine male, and sixty-eight female patients; and in respect of these, the trustees receive yearly payments varying from 100*l.* to 20*l.*, or weekly payments varying from three guineas to 6*s.* Of these patients, sixty-two pay only 6*s.* per week. Nearly the whole of these last are parish paupers. Belonging to the institution is a fund founded in 1789 by the executor of Mr. *T. Lupton*, and thence called “*Lupton’s Fund*,” subject to the sole control and disposition of the Archbishop of *York* for the time being. This fund, which has been considerably augmented by subsequent donations, now consists of 12,180*l.* stock in the 3 per cent. consolidated bank annuities, and the dividends thereof are directed by the founder to be exclusively appropriated to the maintenance of lunatic parish paupers and other indigent lunatics within the city, county of the city, and county of *York*. Three hundred pounds per annum are directed by the archbishop to be paid out of this fund to the asylum, the remainder being still suffered to accumulate at interest. From 1825 to 1830 inclusive, the donations amounted only to 249*l.* The balance in the hands of the trustees in 1825 was 1579*l.*, and in 1830 it had increased to 2572*l.* The institution had also made purchases and erected buildings out of the monies accumulated in their hands

during this period, to the amount of 1000*l.*; so that the accumulation during the five years was about 2000*l.* All benefactors to this institution of 20*l.* or upwards at one time, as well as certain public functionaries for the time being, are governors, who exercise the entire control over the asylum and its funds. A committee of governors is appointed every quarter at a general meeting, and to them is delegated the power of auditing the accounts, contracting with tradesmen for provisions, hiring and discharging servants, determining what sums are to be paid by patients, and what persons are to be admitted, discharging patients, and otherwise giving such orders and directions as they think requisite. The paid officers of the institution receive salaries amounting altogether to 986*l.* a year. The apothecary resides in the asylum, and has two furnished rooms appropriated to his own separate use, in addition to his salary, which would be greater without the occupation of these rooms. The house servant and matron likewise live in the house, but have no exclusive apartments except bed-rooms. The various attendants and domestic servants, and the lunatics, are the only other inmates of the house. The last conveyance from the old to new trustees bears date in 1808, and by it the legal estate in the asylum, and the grounds belonging to it, are vested in them "upon trust for the said charitable institution, or to be from time to time subservient and subject to such intents and purposes relative to the same which shall be ordered by the subscribers, or the major part of them, at some general meeting." Of the seven new trustees two only now survive, and they are also governors. The surviving trustees do not derive any personal benefit from the institution. The asylum is situated in the respondent parish, and several persons in consequence of being employed about it have gained settlements in, and become chargeable to, the said parish. The rate was in these terms:—"100*l.* The trustees of the Lunatic Asylum, 8*l.* 15*s.*" The trustees appealed on two grounds; first, that the asylum was not rateable by law; and, secondly, that if it were rateable, the trustees were not persons liable to be assessed.—Lord TENTERDEN C. J. Upon these facts, it seems to us impossible to say, that this building does not produce a profit by means of the entertainment of those persons who are able to pay for their reception; and if any profit be made, the application of it, when made, is immaterial as to the question of rateability. Then, supposing the building to be rateable, the next question is, who are the occupiers to be rated? Not the servants, for they cannot be considered as occupiers, and certainly not the unhappy lunatics received into the building. Then the property being subject to rate, the trustees, who are in the actual receipt of the profits, must be the persons rateable. There are no persons who can be rateable but the owners, and these are the owners. The case is not distinguishable from *Rex v. Agar*.(a) The order of sessions must be quashed.—Order of sessions quashed.

Held, that as the building produced a profit, it was rateable, and that the trustees, who were the owners, and in actual receipt of the profits, were the persons liable to be rated.

Of Levying and Distraining for the Rate.—1 Bott. pl. 275.

32. *Weaver v. Price*, E. T. 2 W. 4.—3 B. & Ad. 409.—Trespass for distraining and impounding a heifer. Plea, the general issue.

Trespass lies against magistrates for grant-

(a) 14 East, 256.

ing a warrant to levy poor rates, if the party distrained upon has no land in the parish in which the rate was made.

At the trial before *Bosanquet J.*, at the Spring assizes for the county of *Flint*, 1832, the following appeared to be the facts of the case: The plaintiff was the occupier of a field called *Wet Cushion Field*, containing three acres of land, in the county of *Flint*. The defendants were two justices of the peace for that county, and they, on the 13th of *April* 1831, on the application of the churchwardens and overseers of the parish of *Overton*, granted a warrant, reciting, that by a rate duly made, allowed, and published, the plaintiff, an occupier of land in the parish of *Overton*, was rated and assessed for and towards the relief of the poor of that parish in the sum of 3s., and it appeared to the justices, upon the oath of the overseer, that that sum had been demanded of the plaintiff, and he had refused to pay the same, and had not shewn any sufficient cause why it should not be paid; the warrant, therefore, required the churchwardens and overseers to make distress of the goods and chattels of the plaintiff, &c. The money having been levied under this warrant, the question at the trial was, whether the field in question was in the parish of *Overton*, or in that of *Erbistock*. It was objected that in the present case trespass was not maintainable against the justices, but that the remedy was by appeal against the rate. The learned Judge was of opinion, that the magistrates had no jurisdiction to order the money to be levied upon the plaintiff if he had no land in the parish of *Overton*, and if so, that the action lay. A verdict having been found for the plaintiff, and a new trial moved for.—Lord TENTERDEN C. J. There was not, in this case, any rate whereby the plaintiff could be duly assessed to the relief of the poor of the parish of *Overton*; for, in the result, it turned out that he was not an occupier of any land in that parish. That being so, the defendants had no authority to order any distress for a rate to be levied of his goods. They are, therefore, liable in trespass.—Rule refused.(a)

In trespass for entering to distrain for poor rates, the defendant (who had acted on behalf of the parish officers) averred in justification that the plaintiff's house was within the parish, which the plaintiff denied: Held, that the plaintiff could not demand an inspection of the parish books, on the ground that the defendant alleged him to be a parishioner.

33. *Burrell v. Nicholson*, *E. T.* 2 *W.* 4.—3 *B. & Ad.* 649.—The parish officers of *St. Margaret* in the city of *Westminster* assessed the plaintiff to the relief of the poor for his house in *Richmond Terrace, Whitehall*. The plaintiff refused to pay the rate, contending that his premises were not within, or parcel of, the parish, being situate within the verge of the ancient royal palace of *Whitehall*, in the county of *Middlesex*. He was thereupon summoned before two justices, and they issued a distress warrant for the rate, which was executed by the defendant. The plaintiff, for the purpose of trying the question between himself and the parish officers, brought an action of trespass against the defendant for entering his house to distrain. He pleaded a justification. The plaintiff subsequently applied to the attorney acting on behalf of *St. Margaret, Westminster*, for an inspection of all the books and other documents belonging to the parish, then in the custody or power of the parish officers, with a view of collecting such information as they might afford, touching the matter in dispute. This being refused, Sir *James Scarlett* in the present term obtained a rule, calling upon the defendant to shew cause why the plaintiff should not be allowed to inspect the parish books, upon notice of the rule nisi being in the mean time given to the vestry clerk; and it was stated on affidavit in support of the rule, that the books were believed to contain in-

(a) See *Bonnell v. Beighton*, 5 *T. R.* 182.

formation material to the question between the parties.—*Per Curiam*. This is in the nature of an application for a mandamus; for the books, to be the subject of a motion like the present, must be books for the inspection of which a mandamus would lie; and if that had been moved for, the party must have shewn that he had some interest in the documents to be examined. Now that the present plaintiff could not have done. He disclaims being a parishioner, and at the same time demands an inspection of the evidence on the side of the parishioners. *Cox v. Copping (a)* is in some degree different from this case, but there is no reason for departing from the rule there acted upon.—Rule discharged.

Of Appeal against, and Jurisdiction of Sessions.—1 Bott. pl. 304.

34. *Rex v. Justices of Suffolk, H. T. 57 G. 3.*—6 M. & S. 57. —Motion for a mandamus to the justices to rehear an appeal against a poor-rate. The appellant gave notice of appeal on the ground that he was over-rated, and at the hearing of the appeal called on the respondents to begin by proving the rate: to which the respondents objected, contending that according to the practice the appellant ought to begin by establishing his objection to the rate, and the justices being of that opinion, and the appellant refusing to begin, they dismissed the appeal. It was now urged, on the authority of several cases (b), that this practice ought not to prevail, because justice required that the respondents should shew some probable ground for the amount at which they charged the appellant in the rate; otherwise he cannot know how to meet it. The making of a rate is an *ex parte* proceeding; and here the appellant is rated as the occupier of tithes and other things in a gross sum, and how is he to know how to apportion this sum according to the respective matters for which he is rated, so as to shew that in every one, or some at least, of them he is over-rated? But the respondents, who made the rate, must know the proportions, and therefore ought to be called upon to shew them; and doubtless this Court has authority and will interfere to control a practice of the quarter sessions which is unjust and inconvenient.—Lord ELLENBOROUGH C. J. As a general proposition, I should say that the granting of a writ which has for its object a reversal of the order of proceeding at the quarter sessions, according to the rules of practice, which there prevail, is not a jurisdiction which if the Court possess, it will be inclined to exercise, unless it be apparent that gross injustice will follow the refusal of the writ. Now here the appellant did not dispute that he was rateable, but only the amount of the rate; and it is complained against the justices at sessions that, in conformity to their practice, they called on him to begin and make good his allegation that he was over-rated. The appellant says that this was impossible; but he has not shewn why, nor even now ventures to state to us that he was really over-rated; so that he stands merely upon the irregularity of the rule of practice; as to which it is urged that the sessions have not proceeded according to what is thought to be, and perhaps may be, a more convenient rule. But if under such circumstances this Court were to

On appeal against a poor-rate on the ground that the appellant was overrated, the practice at the sessions requiring the appellant to begin by proving his case, which the appellant refusing to do, the appeal was dismissed; the Court refused a mandamus to the sessions to re-hear the appeal on this objection.

(a) 1 Ld. Raymd. 337.

(b) *Rex v. Newbury*, 4 T. R. 475. *Rex v. Topham*, 12 East, 546. *Rex v. Justices of Wilts*, 10 East, 404.

interpose, I am apprehensive that we might be attracting to ourselves a most inconvenient jurisdiction. It would come to this, that wherever the practice at the different sessions should happen to vary we should be called on to decide between them. — BAYLEY J. This is a question touching the regularity of the order of proceeding at the quarter sessions. I do not see that the practice complained of is so inconvenient as alleged; and if the Court were to interfere in this instance we should have to grant a mandamus upon every occasion where the sessions proceed according to a rule of practice which we may not think the most convenient. — ABBOTT J. It would be a dangerous precedent if we were to grant this writ upon the cause alleged. In general, a mandamus to the justices to hear proceeds upon the statute; this writ is asked because of some supposed error in practice. — HOLROYD J. I am of the same opinion. The case of *Rex v. Topham* not only differs from this in the points stated for the opinion of the Court, but the decision also proceeded upon the special circumstances of that case. At the conclusion it was stated that the question made at the sessions was, whether the appellant should begin by proving his case that he was over-rated, or whether the parish-officers should begin by proving a probable case for rating the appellant at so much. And the Court observed that they would have no difficulty in dealing with that proposition when it should come nakedly before them. So that it clearly appears the Court did not consider that they were determining the simple question in that case. — Rule refused.

On the hearing of an appeal against a poor-rate, the sessions have no jurisdiction to quash the rate for a defect appearing on the face of the rate itself, unless that defect be specified in the notice as a cause of appeal.

35. *Rex v. Bromyard*, *E.T. 9 G. 4.*—8 B. & C. 240.—Upon appeal by *E. West*, against a rate or assessment, made for the relief of the poor of the township of *Bromyard*, in the county of *Hereford*, bearing date the 9th of *November* 1827, the sessions quashed the rate with 10s. costs, to be paid by the respondents, subject to the opinion of this Court on the following case:—The particular grounds of appeal stated and specified in the notice of the appellant were only, “that he was over-rated in the said rate or assessment in respect of
“the yearly value of the lauds and tenements for and in respect of
“the occupation of which he was assessed or charged in the said
“rate or assessment; and also that no part, or a very small part only,
“of the lands and tenements in respect of which he was assessed and
“rated in the said rate or assessment, was situate in the said town;
“and also that he did occupy no rateable property, or rateable property to a much less amount than that for which he was so rated
“and assessed in the said rate.” On the rate in question being produced, it appeared to be intitled “An assessment made upon the
“several occupiers of lands, tithes, and hereditaments in the town of
“*Bromyard*, in the county of *Hereford*, of 1s. in the pound for the
“necessary use of the poor and other purposes relative to the acts of
“parliament, granted at a committee meeting the 9th day of *November* 1827, by *T.B.* clerk, and *C.S.L.* dean of *St. Asaph*, two of his
“Majesty’s justices of the peace in and for the said county of *Hereford*.” The property in respect of which the appellant and several others were rated was specified, but the property in respect of which the majority were rated was not stated, the names of the persons and the sums only being inserted. It was contended, that the court of quarter sessions ought not to examine or enquire into this objection to the rate, or to take notice of it, as it was not specifically pointed

out by the notice of appeal. The sessions, however, determined otherwise, and on this objection quashed the rate, subject to the opinion of this Court. — BAYLEY, J. There can be no doubt that it ought to appear on the face of the rate in respect of what property the assessment is made upon each individual charged in the rate; and if the omission of that statement had been pointed out by the notice as one of the grounds of appeal, it would have been a sufficient ground for quashing the rate. In many instances the specification of the property in respect of which the assessment is made will give no further information to the parties to be affected by the rate than the fact of their having been rated at a specific sum. But still the party rated has a right to know in respect of what property he is rated, in order that if he is over-rated in respect of that property he may appeal. If, however, he be satisfied with the amount of the sum for which he is rated, he will not appeal, because it will not be his interest to have the rate corrected. By the statute 41 G. 3. c. 23. the legislature intended to limit the expense of appeals, and to lessen the labour of the justices at sessions. By the fourth section it is enacted, “that all notices of appeal against any rate shall be in writing, &c. and that the particular causes or grounds of appeal shall be stated and specified in such notice; and upon the hearing of any appeal from or against any such rate, the court of general or quarter sessions to which such appeal shall be made shall not examine or enquire into any other cause or ground of appeal than such as are or is stated and specified in the notice of appeal.” Now, suppose there were no notice of appeal whatever, could the sessions quash the rate upon the ground that it was bad for a defect apparent on the face of it? Clearly not. Or could the sessions quash the rate for such a defect, if a general notice of appeal were given, without specifying any cause? They certainly could not, because the statute prohibits their enquiring into any causes of appeal except those mentioned in the notice. For the same reason they cannot, in a case where certain causes of appeal are specified in the notice, go into others not specified. It is said that the words “examine and enquire” are applicable to those cases only where extrinsic evidence is required to shew the defect in the rate, and not to cases where the defect appears on the face of it. But we should not do justice to the intention of the legislature if we entered into so very critical an examination of the language of the act. When the language of a deed is made the subject-matter of discussion, in order thereby to ascertain its legal effect, it may said to be the subject of examination and enquiry. It has been said that this rate is illegal and void on the face of it, because the property in respect of which the assessment is made is not specified. I am of opinion that it is not illegal and void on that ground, unless that be pointed out as a specific cause of appeal in the notice. That is one ground of objection which will render the rate liable to be quashed. But if no objection be made on that ground it will be good. In *Rex v. Aire and Calder Navigation* (a) the objection was specifically pointed out in the notice of appeal. — HOLROYD J. It seems to me that the sessions had no jurisdiction to consider this objection, unless it was specified in the notice as a ground of appeal. They had no jurisdiction whatever over the rate, unless the notice

required by the statute was given, except in the case provided for by the fifth section, whereby it is enacted, "that by consent of the "overseers and of other persons interested, the Court may proceed to "hear and determine the appeal although no notice have been given, "or upon grounds of appeal not stated or mis-stated in such written "notice where any notice shall have been given in writing." It has been argued, that the words "examine and enquire" are to be construed more narrowly than their natural import warrants, and the object of the legislature seems to require. The fourth section requires that all notices of appeal shall be given in a particular manner, and that the particular causes or grounds of appeal shall be specified in the notice. So far that section is directory, but in what follows, it is not merely directory but prohibitory. It goes on, "and upon the "hearing of any appeal from or against such rate, the court of "quarter sessions *shall not examine or enquire* into any other cause "or ground of appeal than such as are stated and specified in the "notice of appeal." Construing this clause according to the natural import of the words used, I think that it means, that the sessions shall not enter into any other causes of appeal than those specified in the notice; but assuming the meaning of the words "examine or "enquire" to be doubtful, I think we ought to put upon the clause that construction which will have the effect of preventing "the "quashing of rates," the inconvenience mentioned in the recital, which it was the object of the statute to remedy; and construing the clause with reference to that object, I think that the sessions had no power to enter into any other causes of appeal than those stated in the notice; and that being so, I think that we must hold that the sessions had no jurisdiction to quash the rate upon the ground that the property in respect of which the assessment was made was not described, because that was not specified in the notice as a cause of appeal.—LITLEDALÉ J. By the statute of the 43 *Eliz. c. 2.*, the rate was to be made upon every inhabitant in respect of certain descriptions of property. The property in respect of which individuals are assessed ought, therefore, to be specified in the rate for two purposes: first, that the parties rated may see whether they have the property, and that it is the subject of the rate; secondly, that other persons may see whether the rate be equally assessed. If the property be not specified, the rate is defective and informal, and that informality is a ground of appeal, provided it be made the subject of appeal by giving the required notice. The 41 *G. 3. c. 23. s. 4.* says, that the sessions shall not examine or enquire into any other cause of appeal than such as are specified in the notice. It is true that in this case there was a defect on the face of the rate itself, which would, therefore, appear on inspection. But if neither the person whose property is omitted, nor others who have an interest that the rate should be equal, make the omission of such property a ground of complaint, the justices have no jurisdiction to quash the rate on that account. I think that the words "examine or enquire" apply to an examination by inspection as well as by extrinsic evidence. The word *examine* is frequently used in the same sense as the word *inspect*. Thus the statute 27 *Eliz. c. 5.*, which gives the writ of *error* from the Court of King's Bench to the Court of Exchequer Chamber, enacts, that the record may be removed into the Exchequer Chamber, there to be *examined* by the justices and barons,

and they are to have full powers to *examine* all such errors as shall be assigned. Now, when error is assigned upon matter of law, it appears upon the face of the record, and whether there be good cause of error or not is ascertained by inspection of the record, and not by extrinsic evidence. So in the statute of the 31 *Edw. 3. c. 12.*, which gives the writ of error from the law side of the Exchequer to the Chancellor and treasurer, the word *examine* is used in the same sense. I therefore think that the justices at sessions could not properly take notice of this objection to the rule. — Order of sessions quashed.

36. *Rex v. Justices of Wilts, T. T. 9 G. 4.* — 8 B. & C. 380. — A rate for the relief of the poor of the parish of *Laycock*, in the county of *Wilts*, was published on the 16th *September* 1827. The quarter sessions were held on the 16th *October*, at *Marlborough*, which is sixteen miles from the parish of *Laycock*. The appellant gave no notice of his intention to try his appeal before the *Michaelmas* sessions, but at that sessions the appeal was entered and adjourned as a matter of course. It appeared upon affidavits that it was the usual practice for the court of quarter sessions for the county of *Wilts*, in appeals against rates, to enter the appeal at the sessions next following the making and publication of the rate, and to adjourn it to the next sessions as a matter of course. Before the *Epiphany* sessions the appellant gave notice of his intention to try his appeal. At the *Epiphany* sessions the respondents put in the rate made on the 16th *September*, and then objected that the appeal not having been heard at the previous *Michaelmas* sessions, nor having been adjourned on proof of want of reasonable notice to the respondents, or of its being impracticable for the appellant to proceed, the justices then assembled had no jurisdiction. The justices at sessions were of that opinion, and refused to hear the appeal. A rule nisi for a mandamus commanding the defendants to enter continuances to the next sessions, and hear the appeal, having been obtained — Lord TENTERDEN C. J. I think that the sound construction of the act of parliament is, that the justices are to receive an appeal against a rate at the next sessions after publishing the same, and that they are then to exercise a discretion whether they will hear and determine it at that sessions, or respite it to the next. It is impossible to say that the matter must at all events be determined at the first sessions. The statute expressly mentions one case where the justices are to adjourn the appeal, and that is where it shall appear to them that reasonable notice has not been given; but other cases may occur in which it may be fit to adjourn the appeal, even though reasonable notice has been given, as in the case of the unavoidable absence of a material witness. Here it appears that the practice of the sessions has been to allow appellants to enter their appeals at the sessions next following the publication of the rate, and to adjourn the hearing to the second sessions as a matter of course. That being the general practice, I think that the appellant in this case, who acted on the faith that such practice would be adhered to, ought not to be deprived of his right of appeal, and therefore that the rule for a mandamus ought to be made absolute. At the same time I think it would be more beneficial to the public, and more consistent with the intention of the legislature, if the justices did not adjourn appeals against rates as a matter of course. I think they should endeavour to induce parties to try their appeal at the next practicable

The 17 G. 2. c. 38. s. 4. does not make it imperative on the justices to hear and determine an appeal at the sessions next following the publication of the rate, but they may adjourn it to the next sessions. Where a rate was published on the 16th of *September*, and the appeal was entered at the *Michaelmas* sessions, but the defendant did not give notice of his intention to try his appeal at those sessions, and the justices adjourned it as a matter of course to the *Epiphany* sessions, according to the usual practice, and the appellant gave notice of his intention to try his appeal at the *Epiphany* sessions, when the justices refused to hear it, on the ground that it ought to have been heard and determined at the preceding sessions, this Court granted a mandamus to compel them to hear the appeal.

sessions after the publishing of the rate. — BAYLEY J. I am of the same opinion. It was competent for the justices at the first sessions after the publishing of the rate, to refuse to receive the appeal unless there was proof that notice of appeal had been given; but they did receive the appeal. Having received it, it was then competent to them in their discretion to adjourn it, and they did adjourn it. I think the appeal ought to have been heard at the next sessions after that adjournment. — Rule absolute.

By a local act, the management of the parish poor was vested in the churchwardens, overseers, governors, and directors of the poor; and an appeal to them was given to any person thinking himself aggrieved by any thing to be done by virtue of the act; and if the appellant should be dissatisfied with their determination, then an appeal was given to the quarter sessions. A parishioner having applied, for relief against a rate, to the churchwardens, overseers, governors, and directors, they, at a meeting, resolved to take no further notice of his application: Held, that, as they had not come to any determination on the subject matter of his complaint, the parishioner could not appeal to the quarter sessions, but that he ought to have first applied for a mandamus to compel the churchwardens, overseers, governors, and di-

37. *Rex v. Justices of Kent*, H. T. 9 & 10 G. 4. — 9 B. & C. 283. Charles Ritchie, a parishioner of Greenwich, had been rated to the relief of the poor by a rate made on the 24th of June 1828. By a local act, the management of the poor in that parish is vested in the churchwardens, overseers, governors and directors. On the 14th of December 1827, the parishioners in vestry assembled, resolved that the sum of 160l. 18s. should be paid out of the poor's rate to Robert Suter, the then vestry clerk, for services performed by him during the time he held that office, and for which no charge had been theretofore made to the governor and directors of the poor. Ritchie objected to the payment. Three of the governors on the 2d of July 1828, signed a check, payable to Suter, and the same was paid. The defendant considering himself aggrieved, within one month after the signing of such check, namely, on the 16th of July, applied for relief, pursuant to the provisions of the local act (a), to the churchwardens, overseers, governors, and directors of the poor of the parish of Greenwich, (at a meeting held on that day) against the poor-rate, on the ground that the payment to Suter was illegal. A meeting of the churchwardens, overseers, governors, and directors of the poor, was held on the 24th of July, when a resolution was moved, seconded, and carried, that no further notice should be taken of Ritchie's application for relief. He being dissatisfied with this resolution, on the 19th of September 1828, gave notice of appeal to E. W. James, the clerk to the governor and directors, against the said resolution, as being a

(a) By s. 63. it is enacted, that if any person shall think himself aggrieved by any rate, or any rule or order, or other matter or thing to be made or done by the said churchwardens, overseers, and governors and directors, by virtue of this act, such person may apply for relief to the said churchwardens, overseers, and governors and directors at any of their meetings, provided that such appeal be made within one calendar month next after payment of such rate shall have been demanded, or next after such rule or order, or other matter or thing, shall have been made or done, and the said churchwardens, overseers, and governors and directors may examine such persons, or any witness, upon oath or affirmation touching the matter of such appeal, and (if they think such person aggrieved) give such relief, or make such order in the matter as to them shall seem meet.

By s. 64. it is further enacted, that if any such person be dissatisfied with the determination of the said churchwardens, overseers, and governors and directors, in regard to any rate complained of, such person shall nevertheless pay the said rate, and after payment of the said rate, but not otherwise, such person may, within three calendar months next after the determination of the said churchwardens, overseers, and governors and directors, appeal as hereinafter provided.

By s. 65. it is further enacted, that it shall be lawful for any person dissatisfied with the determination of the said churchwardens, overseers, and governors and directors in regard to any rate, or any rule or order, or other matter or thing as aforesaid, or for any person who may feel himself aggrieved by any order or conviction of any justice of the peace under this act, to appeal to the justices of the peace at some general session of the peace, or general quarter session of the peace to be holden for the county of Kent, within four calendar months next after the determination of the said churchwardens, overseers, and governors and directors, or next after such matter of complaint or appeal shall have arisen.

thing done by them at the said meeting, and entered into a recognizance and caused the appeal to be entered. It was objected at the sessions that the appeal ought to have been against the signing of the check, or the payment of the money. The sessions refused to hear the appeal. A rule nisi had been obtained, for a mandamus to the sessions to enter continuances and hear the appeal. — Lord TENTERDEN C. J. By the sixty-third section of the act, any person who thinks himself aggrieved by any rate, or any rule or order, or other matter or thing to be made or done by the churchwardens, overseers, governors, and directors, by virtue of the act, may apply for relief to the said churchwardens, overseers, governors, and directors, at any of their meetings, provided the application be made within the time therein specified; and they are empowered to examine witnesses on oath, touching the matter of such appeal, and to give relief. By section sixty-five, any person dissatisfied with the determination of the said churchwardens, overseers, governors, and directors, may appeal to the general quarter sessions within the time therein specified. In this case, a rate was made, and a sum of money ordered to be paid out of that rate to *Suter*. *Ritchie* objected to such payment, and applied for relief under the sixty-third section, to the churchwardens, overseers, governors, and directors, assembled at a meeting on the 16th of *July*. They resolved that they would take no notice of his application for relief; they refused, in fact, to hear the appeal at all. The proper course, under those circumstances, would have been to have applied to this Court for a mandamus, to compel them to hear his appeal; if they had heard it, and come to a determination upon it, and he had been dissatisfied with that determination, he might then have appealed to the quarter sessions. In *Rex v. Tucker* (a) the justices at petty sessions heard the evidence and dismissed the appeal. The rule for a mandamus must be discharged. — Rule discharged.

rectors to hear the appeal.

38. *Rex v. Brooke*, T. T. 10 G. 4.—9 B. & C. 915.—The defendant having appealed against a rate for the relief of the poor of the parish of *Cottingham*, in the county of *Northampton*, for certain saleable underwoods in that parish, the sessions confirmed the rate, subject to the opinion of this Court on the following case:—There are 140 acres of land, called *Lord Sondes' Park*, within the parish of *Cottingham*, in respect of which no person is rated. The park is in the occupation of *Mr. Peach*, as tenant to *Lord Sondes*. Evidence was offered, on the part of the defendant, to prove that, at the time the rate was made, this land was profitably occupied, for the purpose of calling upon the Court to quash the rate, on the ground that no person was rated in respect of it. The evidence was objected to on the part of the parish of *Cottingham*, as it had not been proved that notice of appeal had been served on *Mr. Peach* or *Lord Sondes*. The question for the opinion of this Court was, whether or not the evidence ought to have been admitted.—*BAYLEY J.* It seems to me that the case of *Rex v. Aberavon* (b) furnishes an argument in support of the order of sessions in the present case. There notice of appeal was given to the corporation at large, on the ground that certain land said to be occupied by them was not rated; on the other side it was contended, that the

Where there is an appeal against a poor-rate, on the ground that some person is omitted who ought to be rated, the justices at sessions cannot hear the appeal, unless notice of the appeal, and the ground of it, has been given to the party said to have been improperly omitted.

(a) 3 Barn. & Cres. 544.

(b) 5 East, 453.

corporation did not occupy, but that there was an actual occupation by certain burgesses, and the widows of burgesses, and the question was raised, whether the Court could quash or amend the rate in the absence of notice to them. Lord *Ellenborough* says, "The case is very loosely and inaccurately drawn. We ought to have the right of enjoyment more distinctly stated. It does not appear whether the burgesses who turned stock on the common did so in right of their franchise, or by permission of the corporate body," and the Court were about to send the case back to the sessions to be restated, in order to see whether the burgesses were the occupiers or not; which clearly must have been upon the principle that the occupiers ought to have had notice of the appeal. Then Lord *Ellenborough* says, "I think we may deal with the case as it is. Here is a large track of property producing profit, which is liable to be rated, and no person is in fact rated for it. This property is stated to belong to the corporation, and it may be doubtful whether the occupation shewn be their occupation or that of individuals. Under such circumstances I cannot say that the sessions have done wrong in quashing the rate." Before the 17 G. 2. c. 38. was passed, whenever a party had been improperly omitted out of a rate, the court of quarter sessions were bound to quash it. That statute was passed to remedy that inconvenience, but then it was thought unjust that a party should be affected by having his name inserted in a rate without notice, and the 41 G. 3. c. 23. was passed to remedy this evil. The preamble of the statute recites, that by the 17 G. 2. c. 38. power was given to the justices, upon appeals from rates and assessments, where they should see just cause, to give relief, to amend the same in such manner only as should be necessary for giving such relief without altering the rate in other respects. But if the argument of Mr. *Miller* were to prevail, the sessions would no longer have the option of amending rates; they might in all cases of omission be compelled to quash them, and so appeals would be doubled in number. The sixth section of the act, however, is general, and applies equally to all cases either of amending or quashing rates. It provides, in plain unequivocal terms, that if there is an appeal against a rate because some person who ought to have been rated has been omitted, notice shall be given to such person, and if it be not given the appeal shall not be heard. I am, therefore, of opinion that the course taken by the justices at sessions in this instance was right, and that their order must be confirmed.—LITTLEDALE and PARKE Js. concurred.—Order of sessions confirmed.

OVERSEERS' ACCOUNTS.

Of Appeal against.—2 Bott. pl. 338.

A notice of appeal against overseers' accounts, merely stating that the party intended to try his appeal against the accounts, on

39. *Rex v. Justices of Somersetshire*, H. T. 8 & 9 G. 4.—7 B. & C. 681.—On the 28th of June 1827, *Thomas Pulman* gave the following notice of his intention to try, at the July sessions for the county of Somerset, his appeal against the accounts of the churchwardens and overseers of *St. Decumans*, in that county; the appeal having been duly entered and respited at the April sessions:—"I do hereby give you and each of you notice, that at the next

"general quarter sessions of the peace to be holden for the said county, I shall try my appeal against the accounts made up by you or some or one of you as such churchwardens and overseers, or as such overseers as aforesaid, for the year ending the 25th of *March* last, and by you or one of you sworn to, and allowed by, &c. two justices, on the 4th of *April* instant; and which said appeal was entered and respited at the last general quarter sessions held for the said county, on the grounds and for the reasons hereinafter set forth, that is to say." The items in the accounts, against which he intended to appeal, were then specified, as well as the several objections which he intended to make to each item; and those objections were, that the charges were unlawful, and ought not to be allowed in the accounts; but it was not stated that he was a party aggrieved, and the justices upon that ground refused to hear the appeal. A rule nisi having been obtained for a mandamus, commanding the justices to cause continuances to the next sessions to be entered, and to hear and determine the merits of the appeal—**LORD TENTERDEN C. J.** I think the rule for the mandamus ought to be made absolute. It has been contended, that the principle of the decision upon the highway act is applicable to this case, and, therefore, that the notice of appeal was insufficient, because it was not therein alleged that the appellant was a party aggrieved. But the language of the act of parliament, which gives the right of appeal in this case, is very different from the language used in the act which gave the right of appeal in the former case. The statute 55 G. 3. c. 68. s. 3. (which relates to the highways), gave the right of appeal against an order for stopping up a highway to any party aggrieved; and as the stopping up or diverting of a highway might in some degree be considered to aggrieve all his majesty's subjects, we thought that (as the statute had not given the right of appeal to all persons, but to those persons only who had sustained an injury) the legislature intended to confer that privilege upon those persons only who had sustained some special and particular injury; and, therefore, that it was necessary to allege on the face of the notice, that the party intending to appeal was aggrieved; but the language of the 17 G. 2. c. 38. s. 4. which gives the right of appeal against overseers' accounts, is very different. It is in the alternative, and gives a right of appeal to a party aggrieved by a rate, or to a person having any material objection to it on particular grounds, or to a person having any material objection to the overseer's accounts. The fourth section of that statute enacts, "that in case any person or persons shall find him, her, or themselves aggrieved by any rate or assessment, made for the relief of the poor," so far the statute gives the appeal to "the party aggrieved;" but then those words are dropped, and it goes on: "Or shall have any material objection to any person or persons being put on or left out of such rate or assessment, or to the sum charged on any persons therein; or shall have any material objection to such account as aforesaid, &c. it shall be lawful for such person in any of the cases aforesaid to appeal." This statute, therefore, gives the right of appeal in the case of overseers' accounts, to any person having a material objection to those accounts. The statute 41 G. 3. c. 23. makes no alteration in the law as to the persons entitled to appeal, but merely requires that all notices shall be in writing, and shall specify the

the grounds and for the reasons thereinafter set forth, and then specifying the items against which he intended to appeal, and the objection which he intended to make to each item, was held to be sufficient, although it was not stated that the party intending to appeal was a rated inhabitant of the parish, or a party aggrieved.

grounds of objection. Now, in this case the person giving the notice of appeal, says in his notice, I have material objections to your accounts; and he then proceeds to specify those objections, according to the provisions of the 41 G. 3. He has, therefore, brought himself within the description of persons entitled to appeal by the 17 G. 2. c. 38. s. 4. If it should turn out that he is a mere stranger, the court of quarter sessions may refuse to hear him. The rule for a mandamus must, therefore, be made absolute.—Rule absolute.

Two overseers of a parish divided the duty between them, each taking half a year, and making up a separate account. One appealed to the quarter sessions against the other's account, and the justices after hearing one witness for the respondents, decided (on objections taken) that the appeal did not lie, as the appellant was a co-overseer, and as he had made no opposition to the passing of the account at special sessions and in vestry: Held, that these were no grounds for rejecting the appeal; that the proceeding of the quarter sessions was no hearing of the case, and that as they had not exercised their jurisdiction, a mandamus should issue, calling upon them to hear the appeal.

40. *Rex v. Justices of Gloucestershire*, T. T. 11 G. 4. & 1 W. 4.—1 B. & Ad. 1.—*Francis Hamp* and *Richard Ashwin Walker* were appointed overseers of the poor of the parish of *Guiting Power*, in the county of *Gloucester*, for the year beginning *March 27*, 1829. By arrangement between them, *Hamp* became the acting overseer for the first half year, and *Walker* for the second; and the receipts and disbursements on the parish account were had and made by each separately during the respective periods. Their accounts were separately made up, and at the end of the year, having been examined and allowed by the parishioners in vestry, they were severally sworn to and passed at a special sessions. *Hamp* afterwards discovered some grounds of objection to *Walker's* accounts, and appealed against them. The appeal came on to be heard at the *Gloucestershire Easter* quarter sessions 1830. The respondents called a witness who produced the book containing the accounts of the two overseers, and stated that the appellant and respondent were both at the vestry meeting at which they were allowed; that the book lay there for inspection, and that the appellant took it up and examined *Walker's* accounts several times, and made no objection. When the case had gone thus far the respondent's counsel submitted that, under the circumstances, the appeal could not be maintained; and the sessions held, conformably to the objections taken, that the appellant and respondent must be considered as joint overseers for the whole year; that *Hamp*, the appellant, ought to have dissented from the accounts either at the vestry or before the magistrates; and that the appeal was therefore "out of time and place." On these grounds they dismissed it with costs, the appellant never being heard. A rule nisi was obtained in *Easter* term for a mandamus to the justices of the county to enter continuances and hear the appeal.—*LORD TENTERDEN C. J.* We think in this case a mandamus ought to go. It appears that each overseer kept a separate account of his own receipts and disbursements. There was nothing unusual in this; it often happens that several are appointed on purpose that they may transact business separately. In the present case one appeals against the other's accounts. And why not? His interest in the affairs of the parish is not the less because he is a joint overseer. There is nothing in the statutes against his appealing; and it is reasonable that he should have that power. Then, did the sessions refuse to hear the appeal? It appears that, on the suggestion of counsel, after a witness had been examined, the Court dismissed the case without hearing the appellant, the grounds assigned being that he and the respondent were joint overseers; and that no objection having been taken at the vestry meeting or before the accounts were allowed by the magistrates, the appeal was out of time. I think then that the appeal was not heard, and that the grounds of refusal

were insufficient. The appellant's situation as co-overseer was no reason; nor was there any reason why he should not oppose the accounts at quarter sessions, though he had not objected to them at the vestry or before the justices. The rule, therefore, must be absolute.—BAYLEY J. Though each overseer is competent to transact all the business, yet each may make separate disbursements; and if he has made such as he ought not, I think the joint overseer may appeal as well as any other inhabitant. As to the proceeding of the justices in sessions, it is true there is here the form and ceremony of hearing a witness; but then an objection is taken which is in fact a preliminary one, and goes to prevent the Court from exercising any jurisdiction. It is the same as if it had been taken at first.—LITLEDALE J. For the reasons already given, I think there is no objection to an appeal by one overseer against the other's accounts. As to the other question, if the sessions, after hearing the case, had decided that in point of law an overseer could not appeal against the accounts of his companion, it might have been said that a mandamus would not lie; but here they decide that they have no jurisdiction to go into the appeal at all.—PARKE J. In point of order, the objection was not taken at first, as it might have been; it was however submitted afterwards, and the sessions held that a co-overseer had no locus standi in this appeal. But with reference to this subject, an overseer must be considered in the double character of parish officer and rate payer. If one of two overseers receives money and misapplies it, the other is not answerable for his miscarriages, defaults, and embezzlements; and he may, as a rate payer, complain of them. In *Malkin v. Vickerstaff* (a), the defendant had precluded himself from insisting on the sole responsibility of his companion: that case, therefore, does not shew that one overseer is liable for the other's contracts. Nor is it necessary to determine this point now; for whether he be so or not, he is clearly entitled to appeal against the accounts in his capacity of a rated inhabitant.—Rule absolute.

41. *Rex v. Justices of Norfolk*.—At the quarter sessions for Norfolk in April 1831, an appeal was entered in the following form:—

<p><i>William Rodgers</i>, - - - Appellant</p> <p style="text-align: center;">AND</p> <p>The Churchwardens and Overseers of <i>Bran-</i> <i>caster</i> - - - Respondents.</p>	}	<p>Accounts and disbursements of the overseers, allowed 28th of March 1831.</p>
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The appeal was respited till the following sessions, before which the appellant caused a notice of the said appeal to be served on the overseers for the year ending March 1831, addressed to "J. A. and T. S., now or lately overseers," &c. but not to the churchwardens, and no notice was given to them. The sessions refused to hear the appeal, because the notice varied from the entry of appeal, and because the churchwardens had had no notice. A rule was afterwards obtained, calling upon the justices to shew cause why a mandamus should not issue, directing them to enter continuances and hear the appeal. The affidavits in support of the rule stated, that J. A. and T. S. were the overseers for the above-mentioned year, and were the only parish officers who received and disbursed money during that

An appeal was entered and respited, entitled, "A. B. appellant, and the churchwardens and overseers of B. respondents;" and was stated to be against the allowance of the overseers' accounts. Notice of the appeal, addressed to the overseers only, was afterwards served upon them, but no notice was given to the churchwardens,

who, in fact, had not received or disbursed any money, or kept any account: Held, that the difference between the entry of appeal and the notice was immaterial; and that the churchwardens, having had no account to keep, were not entitled to notice as joint officers with the overseers.

period; and that the accounts in question were passed by them at petty sessions, and were entitled in their names only, as overseers, no mention being made of the churchwardens.—*PARKER J.* I am of opinion that this rule must be made absolute. With regard to the first objection, it is true the appeal is formally entered as an appeal against the accounts of the churchwardens and overseers of *Bran-caster*; but it is evident to any one looking at the subject-matter of the appeal, that it was, substantially, an appeal against the accounts of the overseers; and to them notice was given. As to the second objection, it is clear, from *Rex v. The Justices of Gloucestershire*, that the accounts of joint parish officers may be treated as several, where the money transactions have been separate; and in the present case the churchwardens had, in fact, nothing to do with the account; the overseers received all, and paid all. It would have been useless to serve a notice upon the churchwardens. There was, therefore, no valid objection to the mode in which the notice was addressed and served.—*TAUNTON J.* By the statute 41 G. 3. c. 23. s. 4. it is sufficient if the notice be served on the churchwardens and overseers, or any two of them. If it had been deemed necessary that all should personally be informed of the appeal, the legislature would not have enacted that service on two only should be sufficient. The notice being addressed to all, would not make the appeal more known to those who were not served. It was held in *Rex v. The Justices of Gloucestershire (a)*, that one overseer may appeal against the other's accounts, where they have been separately kept: of course, therefore, any other parishioner may appeal against the accounts of one or more of the overseers and churchwardens, if he or they are the only persons who have had an account to keep, and against whose account, consequently, any appeal could be instituted.—*PAT-TERSON J.* The statute 41 G. 3. c. 23. requires only that notice be served on two of the churchwardens and overseers; and, therefore, it is sufficient that the notice be addressed to two. And as that which was served in the present case contained the subject-matter of the appeal previously entered, I think it was sufficient.—Rule absolute.

PROCEEDINGS FOR AND AGAINST OVERSEERS.

Protection in their Office.—1 Bott. pl. 368.

Where a pauper, who had been permitted to occupy a parish house, went away from home: Held, that the overseers might lawfully enter and resume possession, without giving any notice to quit, and were not bound

42. *Wildbor v. Rainforth*, E. T. 9 G. 4.—8 B. & C. 4.—Trespass for breaking and entering the plaintiff's house, making a disturbance there, and carrying away her goods and chattels; second count, for ejecting the plaintiff from her house; third, for taking her goods and chattels. Pleas, the general issue, and several special pleas, alleging in substance that the goods and chattels in the declaration mentioned were the property of certain persons named in the pleas; that they were delivered to the plaintiff to be taken care of and re-delivered on request; that the plaintiff took such bad care of them that they were in danger of being lost or stolen, wherefore the defendants by the command of the owners entered the house, the outer door being open, and took them away. There were other

(a) 1 B. & Ad. 1. Ante, pl. 40.

pleas, alleging that the plaintiff refused to re-deliver the goods on request, wherefore the defendants took them. To some of these pleas the plaintiff replied *de injuriâ*, and traversed the property in the goods as laid in the others, but the issues taken on them did not eventually appear to be material. At the trial before *Alexander C.B.* at the last Spring assizes for *Lincolnshire*, it appeared that the house in question had for some time been rented of one *Dennis* by the overseers of the poor of the parish. The plaintiff was the widow of a pauper who died in *October 1826*, and for some time before had received parish relief, and was suffered by the overseers to occupy the house in question. After his death the plaintiff continued to reside in it with three children of her husband by a former marriage, and for whose support she received an allowance from the parish, until the 4th of *July 1827*, when she went from home, leaving the three children there. On the 6th the defendants, being overseers of the poor, entered and took possession of the premises, and put locks upon the doors, and took away the children to the workhouse. About ten days afterwards the plaintiff returned, broke open the locks, and resumed possession of the house, and on the 23d of *July* the defendant *Rainforth* came to the house, and finding the door locked, required the plaintiff to open it, which she refused to do, whereupon he broke open the door and carried away the furniture, which belonged to the parish. The Lord Chief Baron told the jury that if they thought it was a parish house, and the furniture parish property, they had a right to enter and resume possession in the manner proved. The jury found a verdict for the defendants.—*LORD TENTERDEN C. J.* The plaintiff was not tenant of the premises, but was allowed to occupy them by the parish officers. Her occupation was in fact theirs. The statute was not intended to take away a right which the owner of property had at common law to enter and take possession, if it could be done peaceably, but to provide an expeditious mode, whereby parish officers might obtain possession where it was obstinately withheld, and that they might not do that which had before been sometimes done, viz. might not turn occupiers out *vi et armis*, which led to further expense and litigation. Here the plaintiff had gone away, the defendants entered, resumed possession, and afterwards carried away the furniture which belonged to them. All that they might lawfully do; there is not, therefore, any ground for objecting to the verdict.—*BAYLEY J.* The provisions of the statute are equally applicable whether the party has wrongfully intruded himself into the premises or has been suffered by the parish officers to occupy them. Now it never could have been intended in the former case that the officers should not be at liberty to resume possession, if that could be done without a breach of the peace; I am, therefore, of opinion that the statute does not apply to the present case, and that the defendants, having the soil and freehold of the house in question, had a right to enter and take possession when the plaintiff went from home.—Rule refused.

to pursue the mode pointed out by the 59 G. 3. c. 12. s. 24.

Punishment, &c. for Misbehaviour, &c.; and herein, of Select Vestries.—1 Bott. pl. 396.

43. *Leigh v. Taylor*, *M. T.* 8 G. 4.—7 B. & C. 491.—Debt on bond, dated the 25th of *March 1817*, for 800*l.* The defendant

An overseer has not, by virtue of his office,

any authority to borrow money; and, in an action against a surety on a bond conditioned for the overseer's faithfully accounting for all sums received by him by virtue of his office, the surety is not liable for a sum lent to the overseer, and applied by him to parochial purposes.

craved oyer of the bond and condition. The condition, which recited that *T. Hutton* had been duly elected overseer of the poor of the township of *Lynn*, in the county of *Chester*, in which situation he would have occasion to receive various sums of money, was, that if *Hutton* should, at all times during his continuance in his office of overseer of the poor of the township of *Lynn*, well and faithfully execute and perform the same, according to the directions of the several acts of parliament made for the regulation of overseers of the poor, and should truly account for, distribute, pay, and apply all such sums of money, not exceeding the sum of 400*l.*, as should come into his hands by virtue of his said office, then the obligation to be void, otherwise to be in full force. Plea, first, non est factum. Second, that the office was an annual office, which *Hutton* held for the space of a whole year, which had long since expired; that the bond was given to secure the faithful performance of said office of overseer during the said year, that is to say, from the 25th *March* 1817 to the 25th *March* 1818 only, and to secure the good and true accounting for, distributing, paying, and applying by *Hutton* of all such sums of money (not exceeding 400*l.*) as should arise or come into his hands by virtue of his said office, during the said last-mentioned year only; and that he did, in fact, during one whole year, from the said 25th *March* 1817 to the said 25th *March* 1818, duly and faithfully perform the said office of overseer of the poor; and that he did, likewise, during the whole of the said year, well and truly account for, distribute, and pay and apply all such sums of money, not exceeding 400*l.*, as did arise or come into his hands by virtue of his said office. Wherefore, &c. Replication, taking issue upon first plea: and as to the last plea, that during the said year, from 25th *March* 1817 to said 25th *March* 1818, and whilst *Hutton* was overseer, he received and had in his hands, by virtue of his said office, 83*l.* 10*s.*, which he had (although requested so to do) wholly neglected and refused to account for, distribute, &c., and the same is still wholly undistributed, &c. Wherefore, &c. Rejoinder, that *Hutton* did well and truly account, distribute, pay, &c. all sums of money, not exceeding, &c. as came into his hands during the said year by virtue of his office. At the trial before *Warren C. J.* of *Chester*, at the Spring assizes 1827, for that county, it appeared, that the plaintiffs were entitled to recover a sum of 56*l.*, provided all the sums which the plaintiffs sought to charge the defendant with could be considered to have been received by *Hutton* by virtue of his office of overseer. One of those sums was 100*l.*, borrowed of one *Fox* by *Hutton* and his co-overseer, and applied by them to parochial purposes. It was objected, by the defendant's counsel, that that sum could not be recovered by the plaintiffs, inasmuch as it could not be said to have been received by *Hutton* by virtue of his office of overseer; an overseer, as such, having no authority to borrow money; *Massey v. Knowles* (a). The learned Judge directed the jury to find a verdict for the plaintiffs for 56*l.*, with liberty to the defendant to move to enter a nonsuit, if the Court should be of opinion that the defendant ought not to be charged with the sum of 100*l.* A rule nisi having been obtained in last *Easter* term for that purpose,—Lord TENTERDEN C. J. The condition of the bond

was, "that *Hutton* should truly account for all such sums of money, not exceeding 400*l.*, as should arise or come into his hands by virtue of his office of overseer;" and the question is, Whether he can be considered as having received by virtue of his office of overseer this sum of 100*l.* which was advanced to him upon loan by *Fox*. The borrowing of money is no part of the duty of overseer. If, indeed, it had been borrowed by the direction of the parishioners, there might have been grounds for saying that it came into his hands in his character of overseer; but that does not appear to have been the case. This, therefore, must be considered to have been a loan to *Hutton* and his co-overseer individually, and not in their character of overseers; and if it was not money received by *Hutton* by virtue of his office, it is not within the condition of the bond. The rule for entering a nonsuit must therefore be made absolute.—Rule absolute.

44. *Bennett v. Edwards*, M. T. 8 G. 4.—7 B & C. 586.—Debt on the statute 17 G. 2. c. 3. The first count of the declaration stated that the plaintiff was an inhabitant of the parish of *Almondsbury*, in the county of *Gloucester*, and that the defendant was one of the overseers of the poor of that parish; that on the 1st March 1827, the churchwardens and overseers of the parish made a rate for the relief of the poor, which was afterwards allowed by two justices, and published by the churchwardens and overseers of the poor of the parish; and that afterwards, and at a reasonable time in that behalf, to wit, on the 23d May 1827, the plaintiff requested the defendant, as such overseer, to permit him to inspect the rate, and tendered the defendant 1*s.* for the same, and although the defendant, as such overseer, had the rate in his possession, yet he would not permit the plaintiff to inspect it, but refused, contrary to the form of the statute, whereby the defendant forfeited 20*l.* Second count, for not furnishing a copy of the rate, averring a tender of 6*d.* for every twenty-four names; third count, the same as the second, omitting the making, allowance, and publication of the rate, and the possession of the defendant. There was a similar set of counts, charging the defendant "as assistant overseer." Plea, general issue, and issue thereon. At the trial before *Littledale J.*, at the Summer assizes for the county of *Gloucester*, 1827, it appeared that the plaintiff was a rated inhabitant of the parish of *Almondsbury*, and the defendant was an assistant overseer, appointed by a select vestry. On the 19th April, *Steele*, an attorney, (not a parishioner,) applied to the defendant, and said he was professionally engaged for *Bennett*, (the plaintiff,) who was dissatisfied with the rates and accounts, and had directed him, *Steele*, to inspect them. The defendant said that the books were at his house, and that *Steele* might inspect them there any day. The plaintiff and *Steele* afterwards required to see the rates, but did not tender the defendant any fee for shewing them. On the 23d May the plaintiff, accompanied by *Steele*, went to the defendant's house; the defendant met them in the yard close to the door. *Steele* said, "it is intimated to Mr. *Bennett* (the plaintiff) that the reason you refused to shew the accounts was because the proper fees were not tendered; I hope you will take the money, and let us see the rate." The defendant then said, "I cannot; I have the books, but I have orders not to shew them;" and a moment afterwards added, "*Bennett* may see them by going to the vestry;" (explaining, upon enquiry, that he meant

By statute 17 G. 2. c. 3. s. 2. it is enacted, "that overseers of the poor shall permit inhabitants of the parish to inspect rates at all seasonable times;" and by sect. 3., "if any overseer shall not permit an inhabitant to inspect the rate, such overseer, for every such offence, shall forfeit and pay to the party aggrieved the sum of 20*l.*." Held, first, that a demand to inspect a rate made on the overseer by a rated inhabitant in the presence of his attorney, was a lawful demand. Secondly, that the refusal to produce the rate upon a lawful demand, constitutes the inhabitant a party grieved within the meaning of the statute. Thirdly, that a notice that a rate of so much in the pound would be col-

lected forthwith, was a good publication of the rate, although it was not stated that it had been allowed by the justices.

Fourthly, that a demand to see "the rate" was sufficiently specific, there being only one rate in case at that time. Fifthly, that the overseer, by refusing to shew the rate, and referring the party to the select vestry as a place where he would be allowed to inspect it, incurred the penalty imposed by the 17 G. 2. c. 3. Sixthly, that an assistant overseer, appointed by a select vestry under the provisions of the 59 G. 3. c. 12. s. 9., is not liable to the penalties imposed by the 17 G. 2. c. 3. s. 3., upon overseers not permitting inhabitants to inspect the rate, unless it be proved that the select vestry have imposed upon such assistant overseer the duty of producing the rate to the inhabitants.

the select vestry, who had consented to meet at short notice should the plaintiff apply for inspection of the rate and accounts.) The plaintiff then tendered 1s. 6d., and said he demanded inspection of the poor rate; and the defendant said, that he had orders not to shew them. A rate was allowed on the 17th May 1827, and published in church on the 20th, in the form following: "This is to give notice, that a rate or assessment of one shilling in the pound will be collected forthwith." The next preceding rate had been made the 8th December 1826, and published on the 24th. The action was brought before June 15th, so that no sessions intervened between the time of the refusal, and the commencement of the suit. Upon this evidence it was objected, inter alia, that the plaintiff not having been aggrieved by the defendant's refusal to produce the rate, could not maintain this action within the 17 G. 2. c. 3. s. 3., which gives the penalty to the party aggrieved; and *Spencely v. Robinson* (a) was cited: and on the authority of that case, but against his own opinion, the learned Judge directed a nonsuit, but reserved liberty to the plaintiff to enter a verdict for the penalty, if this Court should be of opinion that the plaintiff was a party grieved within the meaning of the statute. In *Michaelmas* term last, a rule nisi was obtained by *Campbell*.—BAYLEY J. In the course of the argument six questions have been presented, on one only of which we have felt any doubt. We will first dispose of the others in order. First, the presence of the attorney has been made an objection to the mode of making the demand; and it is said, that, not being a parishioner, he and the plaintiff improperly required the defendant to give them inspection. But it appeared in the course of the evidence that the attorney had explained to the defendant that he asked for inspection on behalf of Mr. Bennett his client; and although by the statute 17 G. 2. c. 3. s. 3. an inhabitant alone is entitled to inspect the rate, yet his attorney, or any other person, may go with him to make the demand, or in case of an improper refusal, how can the demand be proved? Secondly, I think the plaintiff was a party aggrieved. Here the plaintiff had a right to see the rate, in order to satisfy himself whether he was fairly dealt with, and whether other parties were assessed at all, or to the full value, or whether he was overrated; and this inspection was wrongfully denied him. Thirdly, it is said that there was no proper publication in church, because the notice did not state that the rate had been allowed, but merely that it would be collected forthwith. Now the act requires no such publication in words. All that it requires is, "that the churchwardens and overseers, or other persons authorized to take care of the poor in every parish, township, &c., shall give or cause to be given public notice in church of every rate for the relief of the poor allowed by the justices of the peace the next Sunday after the same shall have been so allowed; and that no rate shall be reputed valid and sufficient, so as to collect and raise the same, unless such notice shall have been given." It does not say that notice shall be given "that the rate has been allowed," but "of every rate allowed." This has been done here. It must have been in fact allowed, or the publication would be useless. A notice

(a) 3 B. & C. 658.

that a rate is about to be collected, *ex necessitate* implies that it has been allowed. Fourthly, the objection that there was not a sufficient demand, is answered by the fact that the plaintiff asked for *the* rate. There was no rate in esse at the time of such demand except this, which was published in church on the 20th of *May*, and demand was made on the 23d. Fifthly, it is said that the refusal was not absolute, because the books were offered to be produced at the vestry. But if a party entrusted with the rate has no right to insist on terms, then a refusal qualified by such terms as he has no right to insist on, is an unlawful refusal; and he thereby commits the offence of not permitting the parishioners to inspect the rate within the words of this act of parliament. The remaining question on which we doubt, is, whether the defendant as assistant overseer be liable within the act of parliament. We all think that this rule ought not to be made absolute for entering a verdict for the plaintiff. For if we decide that an assistant overseer may be liable to the penalty imposed by the 17 G. 2. c. 3. s. 3., it will still be a question of fact whether the defendant was such an assistant overseer. If it was part of his duty to produce the rate, the plaintiff will be entitled to a verdict. But if that was no part of his duty, there ought to be a nonsuit. Assuming, therefore, that we should be of opinion that an assistant overseer (whose duty it is to produce the rate), is an overseer within the meaning of the 17 G. 2. c. 3. s. 3., it will still be a question for the jury, whether the defendant was such an overseer. The rule, therefore, can only be made absolute for a new trial.—HOLROYD J. The law knows what an overseer is, but it does not know what is an assistant overseer. He may be appointed generally to do all the business of an overseer, as a deputy, or only to keep the accounts or perform other particular business. If it were his duty to do all the acts which an overseer is bound to do, then he ought to have produced the rate. A jury must decide this by ascertaining the nature of his duty. *Cur. adv. vult.*—BAYLEY J. The question reserved for our consideration was, whether this action was maintainable against the defendant, an assistant overseer, appointed under the statute 59 G. 3. c. 12. s. 7. which enacts, “that it shall be lawful for the inhabitants of any parish, in vestry assembled, to elect any person to be assistant overseer of the poor of such parish, and to determine and specify the duties to be by him executed; and every person so appointed assistant overseer shall be authorised to execute all such of the duties of the office of overseer of the poor as shall in the warrant for his appointment be expressed, in like manner, and as fully, to all intents and purposes, as the same may be executed by any ordinary overseer of the poor.” The select vestry, therefore, are to determine and specify the duties to be performed by the assistant overseer. It did not appear upon the trial, what duties the defendant was liable to perform. He may be liable to perform all or only some of the duties of overseer. It must depend on the nature of his appointment, therefore, whether it was part of his duty to exhibit the rate to the plaintiff in this case. There having been no evidence to shew that it was his duty as assistant overseer to produce the rate, the case must go down to another jury, in order that the nature of his duties may be ascertained. If the jury shall find upon the evidence that it was part of the duty of the defendant, as assistant overseer, to

Where a demand to inspect a rate was made upon an overseer on his own premises, not far from his house, and he refused to allow the inspection, but not on the ground that it was inconvenient to go to his house for that purpose: Held, in an action against him for the refusal, that this was a reasonable demand.

A custom that there shall be a select vestry of an indefinite number of persons, continued by election of new members made by itself, and not by the parishioners, is valid in law. Semble, that it must be part of such custom that there should always be a reasonable number, and that the reasonableness of the number must be decided with reference to long-established usage, and to the population of the parish; such a custom having existed from time im-

produce the rate, he will be liable to the penalty. The rule for a new trial must, therefore, be made absolute.—Rule absolute. (a)

45. *Parker v. Edwards*, M. T. 8 G. 4.—7 B. & C. 594.—This was a similar action against the same defendant, and the circumstances differed only in this respect, that the plaintiff on the 1st of June went to the defendant's house, and was informed by his wife that he was not at home, but in a field 300 or 400 yards distant from his (the defendant's) house. The plaintiff then went to the field and saw the defendant, and there demanded an inspection of the rate; the defendant refused to produce it, merely saying that he had orders not to shew it. In addition to those objections which were made to the plaintiff's right of recovery in *Bennett v. Edwards*, it was insisted in this case, that the demand was not sufficient, because it had not been made at the house of the overseer. The plaintiff was nonsuited for the same cause as in *Bennett v. Edwards*, and in last term *Campbell* obtained a rule nisi to enter a verdict for the plaintiff.—BAYLEY J. I think this demand was made at a reasonable place. The defendant was on his own premises, and near his residence at the time of the demand, and he did not object to produce the rate on the ground that it was inconvenient to him to go home. Let there be the same rule as in the other case.—Rule absolute for a new trial.

46. *Golding v. Fenn*, H. T. 8 & 9 G. 4.—7 B. & C. 765.—A rule had been obtained in this Court for a prohibition in a suit instituted in the consistory court of the Bishop of London, by the defendant *Fenn*, a parishioner of *St. Martin's in the Fields*, to compel the plaintiffs and others, as churchwardens of that parish, to produce the accounts of their receipts and disbursements. They pleaded in the Ecclesiastical Court that their accounts had been duly allowed by a select vestry which had existed in the parish from time immemorial: the defendant, *Fenn*, denied that any such select vestry existed by law. Upon showing cause against the rule for a prohibition, the parties agreed to try the question between them on a feigned issue: the issue was, Whether there was, and from time immemorial had been, a vestry of the said parish, composed of select persons, parishioners of the said parish, for the time being, or not? There were two other issues, as to a custom for the churchwardens to have their accounts audited by the select vestry, which it is unnecessary to notice more fully, as it was not disputed that if the plaintiffs were entitled to a verdict on the first issue, they were entitled to it on the second and third issues also. Plea, the general issue. At the trial before Lord *Tenterden* C. J., at the *Middlesex* sittings after *Easter* term, 1827, the following evidence was given: A charter of feoffment of the year 1225, by which *William*, the tailor of the parish of *St. Martin's*, of *Charing*, confirmed certain lands in that parish; a fine levied in the 35th year of *Henry* the Third, of property, described to be in the parish of *St. Martin's in the Fields*. An extract from

(a) At the second trial, before *Park* J., at the Spring assizes 1828, in addition to the evidence given at the former trial, it appeared that the plaintiff had given the defendant notice to produce his appointment to the office of assistant overseer. The defendant's counsel refused to produce it. The learned Judge left it to the jury, to infer from the conduct of the defendant when the rate was demanded of him, and from the fact of the non-production of his appointment, that it was part of his duty, as assistant overseer, to produce the rate. The jury found a verdict for the plaintiff on those counts which charged the defendant as assistant overseer.

the ecclesiastical taxation of Pope *Nicholas*, 12 *Edw.* 1., in the year 1291, relating to part of the temporalities of the abbot of *Westminster*, described to be in the parish of *St. Martin's in the Fields*. An assize of novel disseisin, in the year 1309, (3 *Edw.* 2.) brought in the Court of Common Pleas by *John de Hyde v. William Brown*, for common of pasture in the parish of *St. Martin in the Fields*, as belonging to his freehold in the same parish. In 1339 (14 *Edw.* 3.) an account preserved in the exchequer of certain rolls of certain payments for the ninth sheaf, fleece, and lamb, in the parish of *St. Martin in the Fields*. A deed of confirmation in 1367, (42 *Edw.* 3.) from *Henry de Bello Monte*, knight, to King *Edward* the Third, of a place and garden, and appurtenances, near to the cross of *Charing*, in the parish of *St. Martin in the Fields*. The defendant, as to this part of the case, relied upon letters patent of the 4 *Jac.* 1., which recited that the inhabitants of *St. Martin in the Fields* had made their humble application unto his Majesty, stating, "that whereas, in the time of King *Henry* the Eighth, the said inhabitants had no parish church, but did resort to the parish church of *St. Margaret's*, in *Westminster*, and were thereby forced to bring their bodies by the court-gate of *Whitehall*, which, the said *Henry* then misliking, caused the church in the parish of *St. Martin in the Fields* to be erected, and made a parish there, which now is so greatly inhabited, as the church is not of sufficient bigness to receive the parishioners, and the church-yard so little, as there is no room to bury their dead," &c. &c. Many entries in the parish books, from 1574 to 1662, were then read to prove the existence of the select vestry. These entries appeared to have been signed by persons described generally as "the masters of the parish." In some instances, however, they were described as "parishioners." It appeared from these entries, that the business transacted was done by a very small number of persons then present. Before the year 1600, it did not appear in what manner these persons were chosen; but after that period, it appeared that the existing body called upon others to become constituent members of their own body. Before the year 1662, the number of persons varied: they never amounted to forty-nine, and at one time were less than twenty. In the year 1662, a faculty was granted by the Bishop of *London* for a select vestry, to consist of forty-nine persons besides the vicar and churchwardens, and authorising ten besides the vicar and churchwardens to act. At the vestry holden next before this faculty was granted, fourteen vestrymen were present, and ten of them were included in the forty-nine appointed by the faculty. A second faculty was granted in 1673, enabling the vicar and churchwardens, and seven others, to act. From 1662, the select vestry had always consisted of forty-nine besides the vicar and churchwardens. The plaintiffs then gave in evidence copies of the following records: first, a copy of a judgment in *Trinity* term 1741 (5 *G.* 2.) between *W. Kendal* and Sir *H. Penrice*, which was an action for a false return to a mandamus, commanding Sir *H. Penrice*, the then archdeacon of *Middlesex*, to swear in *Tucker* and *Kendal* as churchwardens, they having been chosen by the parishioners. He returned that he had sworn in *Tucker* and *Wood* as the churchwardens, they having been elected by the vestry, and upon that the action was brought for

memorial in a parish. In the year 1662, by a faculty granted by the Bishop of *London*, forty-nine persons, together with the vicar and churchwardens, were named as the select vestry; and that number was to be kept up by elections, to be made by ten at least of those forty-nine, together with the vicar and churchwardens. In the year 1673 this number of ten was, by another faculty, reduced to seven; and these faculties were acted upon ever afterwards. Ten out of the fourteen vestrymen, exclusive of the vicar and churchwardens, who were present at the vestry holden next before the promulgation of the first faculty, were part of the forty-nine named in that faculty: Held, that as the vestry appointed by the faculty, and since continued, was not inconsistent with the vestry previously existing by the custom, the custom was not destroyed by the parish having accepted the faculty, and acted upon it ever since, the faculty not being binding in law, and the vestry having

power at any time to depart from its directions.

a false return. There was a verdict for the defendant. Secondly, a copy of a judgment in 1744, on a feigned issue between *Ferrers* and *Tind*, which appeared by the record to have been tried at bar; the issue was, whether there then was, and from time whereof, &c. there had been, a vestry of the said parish, composed of a *certain* select number of persons, parishioners of the said parish for the time being, and there was a verdict in favour of the affirmative of the issue. Thirdly, a copy of a judgment in prohibition in a case of *Berry v. Banner* (a), where the issue raised upon the pleadings was, Whether the churchwarden ought to be elected by a select vestry or by the parishioners, and there was a verdict establishing the election by the select vestry. The plaintiff then relied upon several acts of parliament in which the select vestry of the parish of *St. Martin in the Fields* was recognised as an existing body. One of them passed in the 1 Jac. 2. entitled, "An Act for erecting a new parish, to be called the parish of *St. James*, within the liberty of *Westminster*," enacted, "that the vestrymen, or any six or more of them, should exercise the like power and authority for regulating the affairs of the parish of *St. James* as the vestrymen of the said parish of *St. Martin* have and exercise in reference to that parish." Another passed in the 10th *Anne*, entitled, "An Act for enlarging the time given to the commissioners for building fifty new churches," &c. authorised the commissioners to name a convenient number of sufficient inhabitants in each such new parish respectively to be vestrymen of such new parish, who shall exercise the like powers and authorities for regulating the affairs of such new parish as the vestrymen of the present parish out of which such new parish or the greater part thereof shall be taken, now have or exercise; and if there be no select vestry in such present parish, then as the vestrymen of the parish of *St. Martin in the Fields*, within the liberty of the city of *Westminster*, in the county of *Middlesex*, now have or exercise. Lord *Tenterden* C. J. left it to the jury to say, upon the evidence, first, whether the parish had existed from time immemorial, and if they thought it had, then they were to consider next, whether the select vestry had existed from time immemorial. If they thought there had been such select vestry from time immemorial, they must find for the plaintiff, otherwise for the defendant. The jury having found a verdict for the plaintiff, Sir *James Scarlett*, in *Trinity* term 1827, obtained a rule nisi for a new trial, or for a consultation, notwithstanding the verdict, on the ground that the custom stated on the record, and proved at the trial, was bad for uncertainty, inasmuch as it did not define the precise number of which the select vestry must consist; and he cited *Dent v. Coates* (b) and *Broadbent v. Wilks* (c), to shew that the custom was void for uncertainty. And, secondly, assuming that the custom was good, still it was clear, from the evidence, that it had not existed from time immemorial, because the faculty which had been obtained in 1662, and acted upon by the parishioners ever since, operated as an abandonment of the custom. —Lord *TENTERDEN* C. J. now delivered the judgment of the Court. This case was before the Court on a motion for a new trial of certain issues directed by the Court. The principal issue (the

(a) *Hilary* term, 34 G. 3. *Peake*, N. P. C. 156.

(b) 2 *Str.* 1145.

(c) *Willes*, 360.

others being in fact dependent upon this) was, Whether in the parish of *St. Martin in the Fields* there has been from time immemorial a vestry composed of select persons, parishioners and inhabitants of that parish for the time being, or not? The cause was tried before me: the jury found the affirmative. Considering this as a question whether this parish has had a select vestry, or whether the inhabitants generally have met in vestry, this is the third verdict finding a select vestry. The first was upon issues directed by this Court in the 18 G. 2., and tried at the bar of the Court; and it was consequential to a trial in an action for a false return to a mandamus, at which, according to all probability, the same question had been tried, and the same verdict found, although the form of the record is not such as to shew this with entire certainty. The second was in the year 1792, in a proceeding in prohibition, in which questions of law might have been raised and put on the record to be taken to the highest tribunal of the country. There are also acts of parliament relating to this parish, referring matters to the authority of the select vestry, and, consequently, recognizing the existence of such a vestry; and there was a statute in the reign of Queen *Anne* relating to the new churches built at that time, appointing the vestry of this parish of *St. Martin's*, as it then existed in practice, as a model to be followed by such of the new parishes as had not select vestries otherwise constituted. It was said, however, and said truly, that the select vestry of this parish, as it existed at the date of those acts of parliament, is not precisely that vestry which *may* exist according to the custom found at the present trial. And a similar remark was made as to the two former trials; whether correctly as applicable to the first of them only may be doubted; as applicable to the opinion given by Lord *Kenyon* at the trial in 1792, on the form of the issue as then presented, and to the evidence and verdict as conformable to that opinion, the remark is undoubtedly just. At the trial before Lord *Kenyon*, the form of the issue was treated as a question on a vestry composed of some definite number of persons, whereas the present record raises no such question, and the jury were so informed by me at the trial, and the verdict must be considered as establishing a select vestry not necessarily composed of any definite number of persons. And this has given rise to the objections on which the motion for a new trial was founded. The objections were two; first, that a custom for a select vestry of an indefinite number of persons, continued by election of new members made by itself, and not by the parish at large, was void in law. And, secondly, that the custom in this parish appeared by the evidence to have been discontinued and abandoned, and therefore lost and gone. It is obvious that the first objection does not properly belong to a new trial; but as the issues in this case were directed by the Court, with a view to a proceeding pending in the Court, it properly belongs to that view of the case; and, therefore, the manner of bringing it forward and discussing it is not material. In support of the first objection, it was very strenuously urged, that unless a number be fixed by the custom, below which the vestry must not fall, a vestry filling up its numbers at its own choice may allow itself to be reduced to two or three only, exclusive of the vicar and churchwardens, and thereby the whole government of the parish, as far as relates to the church and its management, and the churchwardens' accounts and other matters of that kind, may fall into the

hands of a number of persons much too small to secure reasonable and proper management, and due attention to the interest of the inhabitants of the parish. It was also objected, that if the number be not limited, the vestry may consist of too many persons, even of the whole parish. This point, however, was little urged, and there is obviously no weight in it; the great complaint against select vestries being, that they consist not of too many persons, but of too few: and if a maximum had been fixed by custom in the very remote times to which custom must go back, the number that might have been proper in those times might, and probably would, be too small for the great increase of population that has gradually taken place. We are also of opinion, that a custom of this kind is not void in law for want of a minimum. But although we are of this opinion, as a matter of law, I would by no means have it understood that we think the evidence or the verdict in the present cause establishes the fact, that there may not be a minimum in this parish. It will be quite consistent with the verdict, and not inconsistent with the evidence, that the number should never be less than the lowest that can be found in any of the lists, and this I believe will, in no list, be found so few as twelve. The form of the issue raised no question of this kind. Now, although no numerical minimum be fixed by the custom, it by no means follows as a consequence, that the number may be reduced to two or three, as the objection supposes: the law may consider it as part of such a custom as the present, that there shall be a reasonable number. I am aware that this may lead to questions what shall be a reasonable number. Such a question, if raised, would be to be decided with reference to long-established usage and to the population of the parish. That number, which might not be too small and not unreasonable three or four centuries ago, in a parish in which there might not be more than a dozen substantial householders or even fewer, might not be reasonable on a change of circumstances, when, by covering fields with houses, the number might be increased more than a hundred-fold. And whatever may be thought of the degree of influence, that the love of power exercises on human conduct, I believe the love of ease does not exercise less; and as no instance is known in practice, in which two or three persons have gratuitously taken upon themselves the whole burthen of administering such of the affairs of a populous parish as belong to a vestry, I do not think there is any reason to provide in theory against such an occurrence, by requiring a definite minimum as essential to the validity of a custom. The question in this case, as in many others, turns upon the balance of convenience. We think it more convenient that a custom of this nature should leave the number undefined, capable of being regulated by reason, and varying with the changes that time produces, than that there should be any fixed point, from or below which no change of circumstances should allow a departure. We therefore think the custom good in law. The second objection, viz. that the custom in this parish appeared, by the evidence, to be discontinued and abandoned, and therefore lost and gone, is a question properly suited to the motion for a new trial. It appears by the evidence, that in the year 1662 a faculty was obtained from the Bishop of London, naming forty-nine persons, together with the vicar and churchwardens, as the select vestry, and appointing that number *in future* to be kept up by election, to be made by ten at least, toge-

ther with the vicar and churchwardens. In the year 1673, this number of ten was by another faculty reduced to seven. These faculties have since been constantly acted upon, have been considered as governing the parish, and treated as a legal foundation of the practice that has since prevailed. It is clear that these faculties have no validity in law. As to the constitution of the first vestry thereby appointed, it appears, that ten out of the fourteen vestrymen, exclusive of the vicar and churchwardens, who were present at the vestry holden immediately before the promulgation of the first faculty, are part of the forty-nine named in that faculty. Now, if the vestry, as appointed by the faculty, and as it has since continued, were inconsistent with the vestry previously existing by the custom, there would be more weight in this objection than can at present be given to it. It is not inconsistent with a custom fixing no definite number, that, for a certain period, the vestry should be considered as consisting of a definite number. If there may be any reasonable number, forty-nine may be thought to be that number, and may be considered as the proper number. Suppose a vestry, consisting of twelve or eighteen persons, should have come to a resolution to increase their number to forty-nine, and should do so, and recommend that number to be kept up in future, and that this resolution and recommendation should be followed in practice for a century and a half, nothing inconsistent with the antecedent usage would in fact be done. The resolution would have no binding force; it might be departed from, and a greater or less number chosen, if the existing body should think fit. And the case would be the same, even if it should appear, that during that time the vestry and the parishioners had thought the resolution binding upon them, and had acted under that opinion. And this is precisely the case of these faculties, and of the opinion and usage that have since prevailed. I have already observed, that ten members of the old vestry became members of the new; and, therefore, the old vestry, or at least a majority thereof, may be considered as having acquiesced in the new. And it is as competent to the vestry to increase or diminish their number, as if no faculty had ever existed. And as the practice is not inconsistent with the custom, we are of opinion that the custom has not been destroyed, but still remains as the law of the parish. The rule for a new trial must, therefore, be discharged.—Rule discharged.

47. *Bennet v. Edwards*, M. T. 9 G. 4—8 B. & C. 702.—On the second trial (a) of this case at the Gloucester Spring assizes 1828, before Park J., a verdict was found for the plaintiff on the fourth count, which alleged:—The plaintiff, before and at the time of the committing of the offence thereafter mentioned, was an inhabitant of the parish aforesaid; and that before and at the time, &c. defendant was the assistant overseer of that parish. And that, theretofore, to wit, on, &c. at, &c. the churchwardens and overseers made a certain rate for the relief of the poor of the said parish, and which rate was afterwards and before, &c. allowed by, &c. and published by the churchwardens and overseers of the poor of, &c.; and that afterwards, and at a reasonable time, to wit, &c. plaintiff requested defendant, as such assistant overseer, to permit him, plaintiff, to inspect the said rate, and then and there tendered to

An assistant overseer appointed under the 59 G. 3 c. 12., and having, by virtue of his office, the poor-rate in his custody, is liable to a penalty for refusing to produce it to an inhabitant when lawfully demanded, according to the

(a) See the report of the case on a motion for a new trial, 7 B. & C. 586. 'Ante, pl. 44.

17 G. 2. c. 3.

Where a declaration alleged that defendant was assistant overseer; that a rate for the relief of the poor was made and duly allowed; and although defendant, as such assistant overseer, had the rate in his possession, and although plaintiff, at a reasonable time, demanded an inspection of it, and tendered 1s., yet defendant refused to produce it, whereby he forfeited 20l.: Held, on motion in arrest of judgment, that the count was sufficient; for if the defendant had the rate in his custody as assistant overseer, it might be presumed that it was his duty to produce it when lawfully demanded.

him 1s. for the same. And although the defendant then and there (as such assistant overseer) had the said rate in his possession, yet he would not permit the plaintiff to inspect it, whereby defendant forfeited for such offence 20l., &c. In last *Easter* term *Taunton* obtained a rule nisi for arresting the judgment, on the ground that it was not averred in the declaration, that it was the duty of the defendant, as assistant overseer, to exhibit the rate to the plaintiff when requested.—BAYLEY J. According to the case of *Spieres v. Parker*, nothing can be presumed after verdict except that which is expressly alleged in the declaration, or which is necessarily to be inferred from those allegations. Here it is not expressly alleged that it was the defendant's duty to exhibit the rate; but we must see whether any fact is alleged, whence that obligation on him is necessarily to be inferred. By the 17 G. 2. c. 3., the action is given against churchwardens, overseers, and persons authorised to take care of the poor; and it is therefore said that the defendant cannot be charged unless he falls within one of those three classes. I agree that he is not a person authorised to take care of the poor within the meaning of the statute. Neither is he a churchwarden. Is he, then, an overseer? Certainly not for all purposes, but for this I think he is. The statute 59 G. 3. c. 12. s. 7. authorises the appointment of assistant overseers; and every person so appointed is authorised to execute all such of the duties of overseer of the poor as shall in the warrant for his appointment be expressed. And, therefore, it is not sufficient to aver that the defendant was assistant overseer; but that must be stated which expressly or by necessary implication shews that he was an assistant overseer with the duty in question cast upon him. If the duty of keeping the parish books and rates is imposed, I think the consequence follows that he must allow the inspection of them. If this were otherwise, the original overseer, when applied to for permission to inspect, might answer that he had them not; the assistant overseer might say that it was no part of his duty to exhibit them: and thus the 17 G. 2. c. 3. would be rendered inoperative. I am therefore of opinion, that when the duty of keeping the rate is imposed, the duty of allowing an inspection of it is imposed also. Now, in the count in question, it is alleged that the defendant, *as assistant overseer*, had the rate in his custody; but he could not have had it in his custody *as assistant overseer*, unless it was specified in his appointment that he should have it. The allegation in this count could not therefore be satisfied without proof of its being specified in the appointment that he should keep the rate; and if that was the duty of his office, the duty of allowing the inspection of it at reasonable times resulted from it. The plaintiff has alleged that his demand was made at a reasonable time. I am therefore of opinion, that after verdict the plaintiff is entitled to recover on this count of the declaration, although it is certainly very imperfect in form.—LITLEDAL J. The statute 17 G. 2. c. 3. makes three descriptions of persons liable to a penalty for not allowing a poor-rate to be inspected—churchwardens, overseers, and persons authorised to take care of the poor. The defendant in the present case is not a churchwarden, nor a person authorised to take care of the poor, nor a complete overseer; but, on a former occasion, the court held, that an assistant overseer having possession of the rate-books, under circumstances that make

it his duty to produce them, is an overseer within the meaning of the 17 G. 2. c. 3. s. 3., and liable to a penalty for refusing to do so. In the earlier part of the count in question, there is no allegation that it was the defendant's duty to produce the rate; but in the breach it is said, that he refused to do so, although he had possession of it as such assistant overseer, and was requested to produce it at a reasonable time. The duties of an assistant overseer are certainly undefined, nor can we tell correctly what they are without seeing the warrant by which he is appointed. The rate-book might be delivered to him for the purpose of collecting the rate only; but then the plaintiff must have been nonsuited; we are, therefore, bound to presume, after verdict, that the defendant was proved to be such an assistant overseer as made it his duty to produce the rate to the plaintiff; and in general we may presume, that when a person has the custody of parish books, as a parish officer, he has them for all lawful purposes for which they may be wanted. Upon the whole, then, I think our judgment should be in favour of the plaintiff, although there is only just sufficient on the record to turn the scale against the defendant.—PARKE J. I also am of opinion, that there is just sufficient on the record to warrant a judgment for the plaintiff. I find it decided in *Bennett v. Edwards*, that a person to be within the 17 G. 2. c. 3. need not be an overseer for all purposes; and I think that decision correct. Now, the declaration before us states, that the defendant was an assistant overseer, which must mean an assistant overseer appointed under the 59 G. 3. c. 12. s. 7. I also find it alleged that he, as such assistant overseer, had the rate in his possession at the time when an inspection of it was demanded. According to *Spieres v. Parker*, we must assume that it was delivered to him for some purpose connected with the duties of his office; and, as those duties can only be some of the duties of the principal overseer, he would have the rate in the same way as the overseer himself. If so, it follows that he was bound to produce it when lawfully demanded, and is liable to a penalty for refusing to do so. If this were otherwise, the parishioners might be altogether deprived of the means of obtaining an inspection of the rate. The rule for arresting the judgment must therefore be discharged.—Rule discharged.

48. *Rex v. Great Faringdon, E. T. 10 G. 4.*—9 B. & C. 541. —*Talfourd* had obtained a rule nisi for a mandamus to the guardians, churchwardens, and overseers of the poor of the parish of *Great Faringdon*, in the county of *Berks*, commanding them to allow *R. B. Gill*, an inhabitant of the parish, and liable and entitled to be rated to the rates for the relief of the poor of that parish, to inspect the books of accounts of the receipts, expenditure, and application of the rates of the said parish, and to take copies thereof and extracts therefrom at his own costs. It appeared by the affidavits in support of the rule, that *Gill* was an inhabitant of the parish liable to be rated; that the care and management of the poor of the parish, pursuant to the provisions of the 22 G. 3. c. 23., was committed to a visitor and guardians, who were appointed annually under that act, and two churchwardens and overseers; that the guardians, acting under the control of the visitor, had the entire care and management of the poor, and that the overseers merely assessed and collected the poor-rates, and paid them over to the guardians; that

A rated parishioner has a right to inspect the accounts of the expenditure of the parish monies kept by guardians of the poor appointed under 22 G. 2. c. 83. and this Court granted a mandamus to the guardians, &c. commanding to allow such inspection.

the accounts of the guardians, with the vouchers, were regularly produced at a meeting held the first *Monday* in every month, for the inspection and examination of the parishioners, and were so inspected and examined; that at a meeting on the 8th of *April*, such accounts for the last year were produced for the inspection of the parishioners, and having been approved of at such meeting, were verified upon oath by *W. Higgins*, the acting guardian, before a justice of peace, and afterwards examined and passed by the visitor of the poorhouse, who was also a justice of peace for the county; that *Gill* had applied to the guardians for leave to inspect the books, and had been refused.—*LORD TENTERDEN C. J.* We have no doubt that the party is entitled to inspect the books at a reasonable time. Assuming that he has no right to appeal, or that the time for appeal is gone by, he may have other good reason for inspecting the books. He has a right to see what has been done. The rule, therefore, must be made absolute.—Rule absolute.

To a mandamus calling on churchwardens and overseers to summon a meeting for the purpose of establishing a select vestry for the concerns of the poor, pursuant to 59 G. 3. c. 12. a return was made, stating that there was by custom, an ancient vestry in the parish, which had from time immemorial consulted and deliberated on parochial matters, and acted as a select vestry for the concerns of the poor; and that they had immemorially been accustomed to perform the duties imposed on select vestries by the statute:

Held, that the return was bad, since the statute imposes some duties, as the management of money raised by poor rates, and

49. *Rex v. St. Bartholomew the Great, T. T. 1 W. 4.—2 B. & Ad. 506.*—A mandamus issued, calling upon the churchwardens and overseers of the poor of *St. Bartholomew the Great*, in the city of *London*, to give public notice of a vestry of such of the inhabitants of the said parish as were by law entitled to attend vestry meetings, and of the place and hour of holding the same, for the purpose, if they should think fit, of establishing a select vestry for the concerns of the poor of the said parish, and of nominating and electing the members thereof, if it should appear to the vestry so summoned, that such select vestry ought to be established in pursuance of and according to the statutes in that case made and provided; or that the said churchwardens and overseers should shew cause to the contrary. The return made by the churchwardens and overseers stated, that the said parish was an ancient parish, and that there was and had been in the same, from time immemorial, an ancient and laudable custom, that the rector of the church of the said parish for the time being, and the two churchwardens for the time being, and such parishioners of the said parish as should have served the office of upper churchwarden of the said church, and such other parishioners as should have been elected by the suffrage of the greater number of the said rector and parishioners, being members of the vestry of the said parish, in vestry parochially assembled, were used and accustomed to be members of the said vestry of the said parish, and, exclusively of the other parishioners, to meet in the vestry of the said church, and there to consult, treat, and deliberate among themselves of the parochial matters and other things concerning the said church and parish, or the advantage and benefit of the said parish, and to act as a select vestry for the concerns of the poor of the same. The return further stated, that the rector of the parish, the churchwardens making the return, and certain parishioners therein named, at the time when the writ was received, were members of and constituted, and at the date of the return still were members of and constituted, the vestry of the said parish according to the custom; some of the last-mentioned parishioners having previously served the office of upper churchwarden, and the residue having, before they became members of such vestry, been duly elected by the greater number of the rector and parishioners members of vestry, in vestry parochially assembled. And that the duties imposed on select vestries by the

act passed in 59 G. 3., to amend the laws for the relief of the poor, had immemorially been used and accustomed to be performed and executed in the said parish, and still were and continued so to be by the vestry so constituted by the said custom as aforesaid.—LITLEDALE J. I am of opinion, taking the whole of this return together, that it cannot be supported. The custom alleged, so far as it regards consulting and deliberating on things concerning the church, and the parish generally, is good; and I am not prepared to say that the custom to act as a select vestry for the concerns of the poor of the parish is objectionable. For although the first provision for the poor by statute was within legal memory, yet before the statute of *Elizabeth* there were modes in which the poor were provided for, by voluntary contribution of individuals, by the bounty of the monasteries, and in other ways; and the management of the relief thus afforded may, in any particular parish, have been intrusted to a select vestry, though not possessing any compulsory powers. But the return goes on to state that the vestry has, from time immemorial, performed the duties imposed on select vestries by the act 59 G. 3. c. 12. I admit that there are cases in which matters of recent origin may be brought under ancient customs, as it was held in *Wilkes v. Williams* (a) that an immemorial exemption for all officers of the Court of Chancery extended to persons filling newly created offices in that Court. But on looking into the statute 59 G. 3. c. 12., it is clear that the principle of that case does not apply here. There are certain duties expressly imposed by the act which cannot have been immemorially performed. The examination into the state of the poor, and inquiry as to proper objects of relief, may have been carried on before legal memory, and orders may have been made before that time for relief, out of such funds as then existed: but the vestry cannot have superintended the collection and administration of all money to be raised by the poor's rates, nor can they have given directions to which overseers could be required, in the execution of their office, to conform, till after the statute of *Elizabeth*. There are also enactments in other parts of 59 G. 3. c. 12., relating to the discharge of duty by select vestries, which are equally inconsistent with the supposition of such duty being performed before the act of *Elizabeth*; as in sect. 2., where power is given to justices to make an order (first summoning the overseers) in case of adequate relief being refused by the select vestry; the clause (sect. 6.) for appointing non-resident overseers on the nomination and at the request of the vestry; and other provisions which it is unnecessary to go into, because it is sufficiently clear from the parts of the act already mentioned that the custom relied upon is not truly alleged.—PARKE J. I am of the same opinion. By the statute of 59 G. 3. the inhabitants of a parish have a right to establish a select vestry according to the provisions there made, except in certain specified cases; one of which is, where there is already in the parish a select vestry, established and acted upon by virtue of ancient usage or custom, and which vestry would be disturbed in its functions by the establishment of a new one. But supposing such a vestry to exist, with a control over the poor, it ought, in order to exclude the operation of the act, to have already

making orders for the government of overseers, which could not have existed before the statute 43 Elis. c. 2.

(a) 8 T. R. 631.

as extensive powers for the regulation of the poor as the statute gives to new select vestries. And the present return states that the ancient vestry has immemorially performed all the duties imposed by the statute. Then the question is, looking at this statement, and comparing it with the statute, whether it can by possibility be true. Among the duties imposed by the statute is that of superintending the funds raised by poor's rates; and it is enacted that the overseers, in the execution of their office, shall conform to the directions of the select vestry, which is substantially a provision that the vestry shall make orders to be binding on the overseers. Now we know judicially that there were neither overseers nor poor-rates before the 43 *Eliz.* The ancient vestry may have had, from time immemorial, the power of applying and managing funds raised for the relief of the poor otherwise than by compulsory rates, and there is no reason that they should not continue to enjoy that authority, if existing. But it is also clear that the inhabitants are not precluded from exercising the power of appointing a vestry to discharge those functions, and very important ones they are, which arise out of the poor-law first established by the statute of *Elizabeth*. And this decision will agree with the opinion expressed by Lord *Tenterden* in *Rex v. Woodman (a)*.—TAUNTON J. The parish has, *prima facie*, a right to that which is sought by the present mandamus. Then is any reason shewn why they should not obtain it? The return states that the ancient vestry has been accustomed to act as a select vestry for the concerns of the poor; in what way, is not there specified; but it is afterwards said that the duties imposed on select vestries by 59 *G. 3. c. 12.* have immemorially been executed and still are so by the vestry constituted by custom as aforesaid. This, as an exposition of the mode in which the vestry has been accustomed to act for the poor, is manifestly untrue, because it is impossible they should have immemorially discharged some of the duties imposed by the act, which have been already pointed out. The return then cannot be supported, inasmuch as it discloses matter which we know judicially not to be true. No blame is to be imputed on this account to those who prepared the return, for it was impossible, under the circumstances, to make it tenable. With regard to the exception in sect. 36., if that could be understood as preventing the formation of a new select vestry in any parish where one had already existed, and exercised any superintendence over the concerns of the poor, it would follow that such a parish could not by possibility have a select vestry to carry on the management of the poor according to the provisions of the act. An ancient vestry may perhaps have a concurrent jurisdiction with one appointed by the statute, on some matters relating to the poor, as well as the power which has usually belonged to vestries in ecclesiastical and other parochial affairs, but that is not material to our decision on the present return.—Peremptory mandamus awarded.

By an act for the relief of the poor of a parish, the vicar, churchwardens, and overseers

50. *Rex v. St. Mary Abbots, Kensington, T. T. 1 W. 4.*—2 *B. & Ad. 740.*—*French* obtained a rule in this term, calling on the trustees of the poor and the vestry clerk of the above parish to show cause why a mandamus should not issue, commanding them to call a meeting of the trustees for the purpose of swearing and admitting,

and at such meeting to swear and admit, *John Johnson*, as one of the fifty-one trustees of the poor of the said parish. The affidavits in support of the rule referred to an act, 17 G. 3. c. 64., for the better relief and employment of the poor of *St. Mary Abbots, Kensington*, by which (after providing that the vicar, churchwardens, and overseers for the time being, and certain other persons particularly mentioned, should be trustees for putting the statute in execution,) it was enacted that the vicar, churchwardens, overseers, and parishioners qualified as was after-mentioned, should meet in the vestry room of the said parish on *Thursday* in *Easter* week, in every third year from and after the passing of the act, or within ten days then next ensuing (notice having been given as by the act was directed); and they, or the major part of them so assembled, should examine and enquire how many of the trustees in the act before named, or their successors, should have died, removed out of the parish, or should have refused or neglected to act for the space of two years preceding such meeting, or should appear to have become otherwise disqualified to act in the execution of the said statute; and the said vicar, &c. were thereby authorized and required to elect and appoint by ballot one other fit and proper person, being a parishioner, qualified as therein mentioned, in the room of every such trustee so dying, removing, refusing, or neglecting to act, or having become disqualified, or of any trustee who should be desirous of relinquishing the trust and should give due notice thereof, so that the number of trustees for putting the act into execution should every third year be filled up to the number of fifty-one, over and besides the vicar, churchwardens, and overseers of the poor for the time being. The affidavits went on to state that at a meeting holden for the purpose of filling up the list of trustees, at which *John Johnson*, the party making this application, attended, it was proposed that the name of *Mr. Charles Chesterton* should be struck out of the list of the said fifty-one trustees, and that some other person, being a parishioner, should be elected in his stead, inasmuch as he was then (as he continued at the time of swearing the affidavit) filling effectively the office of vicar's churchwarden of the said parish, and as such, was, in right of his office, entitled to act as a trustee without having his name in the list of the said fifty-one trustees, and that therefore fifteen vacancies were to be filled up, otherwise there would only be fifty trustees over and besides the churchwardens, overseers, and vicar. It was further stated in these affidavits that there were in fact, at the time of that meeting, fifteen vacancies to be filled up, including that alleged to be made by *Chesterton's* becoming churchwarden: and that *Johnson*, being duly qualified, offered himself as a candidate, was duly elected one of the fifteen, and afterwards presented himself to the vicar and trustees and their clerk, to be sworn in, but was rejected by them. The affidavits in answer also referred to the act of parliament, and stated, that at the meeting in question, according to the course which had been customary on such occasions, fourteen vacancies were declared as having been occasioned by death, removal from the parish, non-attendance, and relinquishment; and thereupon fourteen persons were duly elected by ballot in the room of those who had so vacated the office, each of them having more votes than the said *John Johnson*, and that those persons afterwards duly qualified themselves; that at the time of the election

for the time being, and certain persons named, were to be trustees for putting the act in execution; and a meeting was to be held every third year, to elect new trustees in the room of those who should have died, removed, become disqualified, or relinquished office; so that the number should every third year be filled up to fifty-one, over and besides the vicar, churchwardens, and overseers for the time being. One of the fifty-one trustees having become churchwarden, Held, that no vacancy was created thereby.

there were fourteen, not fifteen, vacancies (*Chesterton* not being considered as having vacated his office of trustee); and that on former occasions (which were specified) when trustees were appointed churchwardens, no vacancy was declared on that account.—*Per Curiam*. There was no fiftieth vacancy unless *Chesterton* became disqualified by taking the office of churchwarden. On looking to the whole of the act, this does not appear to be its meaning. The intention was, that there should always be fifty-one trustees, besides any who might be so merely by virtue of office. A person by becoming an official trustee does not forfeit the character of trustee which he held by previous appointment. It was evidently not considered essential that the full number of fifty-one besides the vicar, churchwardens, and overseers, should always be kept up, for if so, the elections would not have been triennial, but provision would have been made for filling up each vacancy as it occurred.—Rule discharged, but without costs.

By ancient custom a select vestry was to consist of the rector, churchwardens, and those who had served the office of upper churchwarden, and other parishioners to be elected by the vestrymen. The practice in modern times had been to elect as vestrymen those parishioners only who had been fined for not serving the office of upper churchwarden: Held, that they were good vestrymen.

51. *Rex v. Brain*, *E. T.* 2 *W.* 4.—3 *B. & Ad.* 614.

By a local act for certain incorporated parishes, guardians of the poor were appointed, and were authorised to appoint a clerk, and to make rates; and all poor-rates and books purporting to be rates made for the said parishes, and all papers relating to the settlement of the poor, were to be delivered by the churchwardens and overseers to the clerk of the guardians for the time being, who was to cause the same to be preserved and filed. The clerk to the guardians paid the casual and out-poor weekly, and transacted some other matters relating to the poor, and had the custody of the books:

52. *Whitchurch v. Chapman*, *T. T.* 2 *W.* 4.—3 *B. & Ad.* 691.
—Debt for penalties on 17 *G.* 2. c. 3. s. 3. The declaration stated that the plaintiff was an inhabitant and parishioner of the parish of *St. Lawrence*, in the town and county of the town of *Southampton*, that the defendant was clerk to the guardians of the poor within the town and county, and was a person authorised to take care of the poor within the same; that a poor-rate was made by the guardians, confirmed by two magistrates, and duly published; that the plaintiff requested the defendant, being such clerk to the guardians, and a person authorised as aforesaid, and having the care and custody of the books and rates, to permit him, the plaintiff, to inspect the rate, and tendered to him 1s. for the same, but that the defendant refused. The second count stated that the defendant was clerk to the guardians, and had by law the care and custody of the rates of the said town and county of the town of *Southampton*; and then alleged demand and refusal. At the trial before *Taunton J.*, at the Summer assizes for the county of *Hants* 1831, it appeared that by a local act, 13 *G.* 3. c. 50., the several parishes in the town and county of *Southampton* were united into one district for the purpose of maintaining, relieving, and employing the poor of those parishes, and that certain persons therein named were incorporated by the name of “The Guardians of the Poor within the Town and County of the “Town of *Southampton*,” to whom the care and management of the poor of the said several parishes was thereby committed. Section 16. authorised the guardians, or any nine or more of them, to nominate, appoint, and employ from time to time, such person and persons as they should think proper, to be and officiate as clerk. By sect. 21. the guardians were authorised to make rates. By sect. 43. it was enacted, that “all rates and books purporting to be rates made for “the relief of the poor of the said several parishes, and all other “writings and papers whatsoever relative to the settlement of any “poor within the said several parishes, shall be delivered by the said “churchwardens and overseers respectively to the clerk of the said

"guardians for the time being, who shall cause the same to be presented and filed, so that reference may be had thereto at any future time." It appeared further, that the defendant was appointed clerk to the guardians, and that he every week paid money to the casual poor and out-poor, amounting sometimes to 60*l.* or 70*l.*; that he received a check for the amount from the chairman of the guardians; that the assistant overseer collected the rates; that the defendant always applied to the justices on the subject of illegitimate children; and that when the guardians were applied to for relief, they always referred to the defendant. He attended the meetings of guardians, which took place twice a week, and acted as clerk. The books remained in his custody. A rate having been duly made and published in April 1831, the plaintiff, a rated inhabitant and rate payer, demanded to inspect the same, but was refused. Upon these facts Taunton J. was of opinion that the defendant was not a party authorised to take care of the poor within the 17 G. 2. c. 3. s. 3., and therefore not liable in this action, but he directed the jury to find a verdict for the plaintiff for one penalty of 20*l.*, reserving liberty to the defendant to move to enter a nonsuit. A rule nisi having been obtained for this purpose—Lord TENTERDEN C. J. No persons are subject to the penalty imposed by the stat. 17 G. 2. c. 3. s. 3., but churchwardens, overseers, or persons authorised to take care of the poor. The defendant was neither a churchwarden, an overseer, nor a person authorised to take care of the poor. The guardians were the persons so authorised. In *Bennett v. Edwards* (a), the defendant was an assistant overseer, the case, therefore, fell within the words of the act; and he appeared to be the only person who had possession of the rate.—LITLEDALE J. In *Bennett v. Edwards*, the defendant, who had the custody of the rate, was a person authorised to take care of the poor. Here, by the local act, the clerk of the guardians is to have the custody of the poor rate, but the guardians are the persons authorised to take care of the poor, and the demand of inspection ought to have been made on them.—PARKER and TAUNTON Js. concurred.—Rule absolute.

53. *Rex v. St. Martin-in-the-Fields*, T. T. 2 W. 4.—3 B. & Ad. 907.—A rule nisi was obtained in last Easter term for a mandamus calling on the defendants to give public notice of, and to convene, a general meeting of the rated inhabitants of the parish for the purpose of establishing a select vestry for managing the concerns of the poor according to the statute (59 G. 3. c. 12.), and to nominate and elect such and so many substantial householders, &c., not exceeding twenty, nor less than five, as should at any such meeting be thought fit to be vestrymen. It appeared on affidavit made in answer to the application that there was an ancient select vestry in the parish (b); that by virtue of several acts of parliament (23 G. 2. c. 35., 2 G. 3. c. 22., 7 G. 3. c. 39., 10 G. 3. c. 75.) the vestrymen had acted with the parish officers and certain other inhabitants in the care and management of the poor; and that they had by the last-mentioned act a joint authority with the parish officers and with certain inhabitants in making poor-rates and enforcing their payment. It did not, however, appear that the vestry enjoyed all the powers required by the act 59 G. 3. c. 12. to be exercised by select vestries.

Held, that he was not a person liable to the penalties imposed by the 17 G. 2. c. 3. s. 3. upon churchwardens, overseers, or other persons authorised to take care of the poor, for not permitting an inhabitant to inspect the rates.

Where an ancient select vestry existed in a parish, having and exercising certain powers in the management and care of the poor, but not all the powers required by the statute 59 G. 3. c. 12. to be exercised by select vestries, the Court granted a mandamus calling on the parish officers to convene a meeting pur-

(a) 7 B. & C. 586.

(b) See *Golding v. Fenn*, 7 B. & C. 765.

suant to the act, for the purpose of establishing a new select vestry, to perform those functions under the act, which the former vestry could not discharge; but not otherwise to interfere with it.

—Lord TENTERDEN C. J. The new vestry being intended only to exercise those special functions required by the act, which the present vestry cannot perform, I think the rule, as to the first part of it may be made absolute. The other part, perhaps, had better be taken separately.—LITLEDALE J. The act provides, by sect. 36 that nothing therein contained shall take away or affect the powers or provisions of any special or local act; therefore a new vestry may be furnished with the powers given by this statute without destroying the former vestry.—PARKE J. The thirty-sixth section enacts, that such of the directions and powers of that act as are not repugnant to, nor incompatible with the provisions of special or local acts, shall be adopted as in other parishes or places, and that no ancient select vestry should be disturbed. The powers sought in this case are not repugnant to the provisions under which the former vestry has acted. If, indeed, this parish has had a local act, giving the old vestry all the powers specified by 59 G. 3. c. 12., that vestry could not have been interfered with.—TAUNTON J. concurred.—The rule was made absolute as moved for, it being understood that different days were to be appointed for the two purposes mentioned in the rule.

APPRENTICES.

Of the Indenture.—1 Bott. pl. 642.

The statute 10 G. 2. c. 31. s. 5., after reciting the inconvenience which happens by watermen, &c. taking apprentices before they are housekeepers or have any settled habitation for themselves or their apprentices, enacts, that it shall not be lawful for any waterman, though a freeman of the (waterman's) company, or his widow, to take to keep any person as his or her apprentice, unless he or she shall be the occupier of some house or tenement wherein to lodge him or herself and such apprentice; and that he or she shall keep such

54. *Rex v. Gravesend, H. T. 2 W. 4.*—3. B. & Ad. 240.—Upon an appeal against an order of two justices, whereby *Joseph Needham*, waterman, and *Sarah* his wife, and their children, were removed from the parish of *West Thunmuck* in *Essex*, to the parish of *Gravesend* in *Kent*, the sessions confirmed the order, subject to the opinion of this Court on the following case:—*Needham*, the pauper, before and when he was bound apprentice as after mentioned, was living in the parish of *Gravesend* with Mr. *Twiss*, lighterman and freeman of the waterman's company, as his servant. *Twiss* had at that time two apprentices regularly bound to and serving him. It was agreed between *Twiss* and *Needham* that the latter should be his apprentice, and with this view he was sent up by *Twiss* to *Waterman's Hall* to be bound to Mrs. *Elizabeth Pearce*, who was entitled, as the widow of a freeman of the waterman's company, to take apprentices. She was living at *Gravesend*, at the house of her daughter; and she had no business or residence of her own. At *Waterman's Hall* *Needham* was regularly bound to Mrs. *Pearce* for seven years from the 11th of *October* 1804, but upon an understanding that he was to serve *Twiss*. He never went to or served Mrs. *Pearce*. She retained one part of his indentures, but *Twiss* bore the expenses of the binding, and paid her a sum of money every quarter in consideration of *Needham's* services as long as *Needham* stayed with him. The latter resided with him in the parish of *Gravesend*, and served him, conformably to the indentures, for about two years; he then ran away, and never returned to the service. On the 19th of *January* 1815 he was made a freeman of the waterman's company, as having served *Elizabeth Pearce*. It is the practice of the waterman's company to confer the freedom of that company upon apprentices who may not have served their masters regularly during all the time for which they were bound,

if the masters are satisfied, or are remunerated for lost time. The court of quarter sessions held that the indentures were not rendered void by the stat. 10 G. 2. c. 31. s. 3. and 5., and that service under them conferred a settlement; and they confirmed the order of removal, subject to the opinion of this Court as to the validity of the indentures.—Lord TENTERDEN C. J. In support of the settlement of the pauper in *Gravesend*, and of the order of sessions, it was contended that the indenture of apprenticeship was not void, but only voidable at the election of the parties to it, and *The King v. St. Nicholas, Ipswich* (or *St. Nicholas and St. Peter's (a)*), and some other cases which uphold the authority of that case, were cited in support of the argument. On the other side it was contended that the binding in this case, being in direct violation of the provisions of the statute 10 G. 2. c. 31., was absolutely void; and the case of *The King v. The Inhabitants of Hipswell (b)* was relied upon as an authority in point. Upon reference to the statute 5 Eliz. c. 4., and the 10 G. 2. c. 31., a manifest distinction will be found. The clause of the statute of *Elizabeth* declaring that indentures and bindings otherwise than by the statute is limited and provided, shall be clearly void, is the forty-first section. The clause which was relied upon in *The King v. St. Nicholas (c)* for the purpose of shewing the indenture to be void, is the twenty-sixth section. But this twenty-sixth section is not negative or prohibitory; it is permissive only. It allows a householder in a town corporate to take an apprentice of the description therein mentioned for seven years. The apprentice thus allowed to be taken is the son a freeman, not occupying husbandry, nor being a labourer, and inhabiting in the same or some other city or town corporate. But this section does not enact that no apprentice shall be taken, who is not the son of such a freeman as therein mentioned, or that an apprentice shall not be taken for less than seven years. And if a binding for less than seven years had been held void, it would have been difficult to say that the binding in a town corporate, of the son of a person not falling within the description in the statute, must not be void also; and this appears to have been the opinion of Lord Hardwicke. It is well known that the policy or expediency of this and some other of the provisions of this statute of *Elizabeth* had ceased to be acknowledged before the decision in the case I have mentioned. And the other Judges of the Court, according to the report by *Burrow*, observed that the act seemed more beneficial to corporations than to the public in general. Indeed, it bears a strong resemblance to the system of keeping persons in the caste in which they were born, that prevails in some parts of the East. But the fifth section of the statute 10 G. 2. c. 31. is negative and prohibitory. It recites a mischief, and for remedy thereof enacts that it shall not be lawful for a waterman or his widow to take, retain, or keep an apprentice, unless he or she be the occupier of a house or tenement to lodge him or herself and the apprentice. Sect. 4. prohibits a waterman from taking more than two apprentices. It is clear, upon the facts found, that the binding of this pauper was an evasion of these sections. The contract, then, was a prohibited contract, and this case falls within the princi-

apprentice in the same house or tenement wherein he or she shall lodge or lie, on pain of forfeiting 10*l.* for every offence.

By section 4. it provided, that no such freeman or freeman's widow shall take or retain more than two apprentices at the same time, under a penalty:

Held, that by section 5. any contract to take an apprentice, entered into by such freeman or widow, not being an occupier of some house, &c. or having already two apprentices, was prohibited; and, therefore, that where a pauper bound himself by indenture of apprenticeship to serve the widow of a waterman, she not having such house, &c. but it being understood that he was to live at the house of a freeman of the company (which he did), and to serve him conformably to the indenture, he having two other apprentices at the time, such indenture was absolutely void, and no settlement was gained by serving under it.

(a) *Burr. S. C.* 91.
(c) 6 *Burr. S. C.* 91.

(b) 8 *B. & C.* 466.

ple of the decision of this Court in *The King v. The Inhabitants of Hipswell* (a). Upon the authority of that case, and upon the distinction between a prohibited contract and a provision like that of the twenty-sixth section of the statute of *Elizabeth*, we are of opinion that this indenture of apprenticeship was absolutely void, and that no settlement could be gained under it; and consequently the rule for quashing the orders must be made absolute.—Orders of sessions quashed.

Of the Stamp Duty.—1 Bott. pl. 661.

A pauper was bound apprentice by the trustees of a public charity. The master covenanted to find him meat, drink, apparel, washing, &c. Before the execution of the indenture, the father of the pauper, who was not a party to it, agreed with the master to find the pauper clothing and washing during the term; and he did so. It did not appear that the trustees were privy to this engagement.

Held that the indenture did not require to be stamped, because either the agreement by the father to provide clothes was not a thing secured to be given to or for the benefit of the master within the 55 G. 3. c. 184. *sched. part 1. tit. Apprenticeship*, or, assuming that it was, then it

55. *Rex v. Aylesbury*, E. T. 2 W. 4.—3 B. & Ad. 569.—On appeal against an order of removal from *Aylesbury* to *Leighton Buzzard*, in the county of *Bedford*, the sessions quashed the order, subject to the opinion of this Court on the following case:—The pauper, on the 4th of *November* 1823, was bound apprentice by the trustees of a public charity to *William Fryer* for seven years. The master covenanted to find the pauper meat, drink, apparel, washing, lodging, and all other things needful during the apprenticeship. Before the indenture was executed, the father of the pauper, who was no party to it, agreed with the master to find the pauper clothing and washing during the term, and he accordingly did so during great part of the time; and the clothes and washing so supplied might amount to 10*l.* in value. The master said he would not have taken the pauper unless the father had made such agreement. There was no evidence that the trustees of the charity were privy to this arrangement. The indenture was not stamped, and it was objected by the appellants, that the apprentice had not been bound by, or at the sole charge of a public charity; and, therefore, that the want of a stamp rendered the indenture invalid; and the sessions allowed the objection. The question for the opinion of this Court was, whether the indenture ought to have been stamped under the statute 55 G. 3. c. 184. (b) —Lord TENTERDEN C. J. I cannot distinguish this case from *Rex v. Leighton* (c), where this point seems to have been very fully considered. That case turned upon the 8 *Anne*, c. 9. s. 45., the words of which are very similar to those of the 55 G. 3. c. 184., *sched. part 1. tit. Apprenticeship*, and the decision proceeded on the ground that there was no obligation on the part of the master, in the absence of express stipulation, to provide clothes or sustenance for an apprentice, and therefore that the agreement so to do by the father could not be considered a benefit to the master; and the concluding words of Lord *Kenyon*'s judgment apply to the present case: "The clear meaning of the statute of *Anne* is, that where money or "money's worth is given to the master by the friends of the apprentice "by way of premium, a duty ought to be paid for it; but that where "meat, clothes, &c. are to be provided for the apprentice, no duty is payable, because there is not any thing given to the master." It is urged that that case is distinguishable because there the father co-

(a) 8 B. & C. 466.

(b) By the 55 G. 3. c. 184. *sched. part 1. tit. Apprenticeship*, it is enacted, that if the sum of money, or the value of any other matter or thing which shall be paid, given, assigned, or conveyed to or for the use or benefit of the master or mistress, with or in respect of such apprentice, &c. or both the money and value of such other matter or thing, shall not amount to 30*l.* a duty of 1*l.* shall be paid.

(c) 4 T. R. 732.

venanted in the indenture to provide clothes, &c., but that here the benefit is given to the master by the father's agreement independent of the indenture. But that agreement being prior to the indenture, if it was made without the knowledge of the trustees of the charity, it was a fraud upon them, and therefore void, even if the providing clothes could be considered as any thing given to or for the benefit of the master; but I think that the agreement by the father to provide clothes cannot be considered as having that effect.—LITTLEDALE J. I think this case falls within *Rex v. Leighton (a)*.—PARKE J. It is said that there is a benefit conferred on the master by the agreement of the father to provide clothes, and that that is equivalent to a sum of money. Assuming it to be so, the agreement was then a fraud on the trustees of the charity, for it is clear from the covenant in the indenture that they bound out the pauper on the faith that the master was to find apparel, &c. (b); and the latter could not have sued the father for not providing clothes, for there was no binding engagement on him so to do.—PATTERSON J. concurred.—Order of sessions quashed.

was void as being a fraud on the trustees, who had bound out the apprentice on the faith that the master was to provide clothes.

Of Parish Apprentices. — 1 Bott. pl. 736.

56. *Rex v. Countesthorpe*, T. T. 1 W. 4. — 2 B. & Ad. 487. — Upon an appeal against an order of two justices, whereby *Thomas Watts* was removed from the parish of *Dingley* in the county of *Northampton*, to the parish of *Countesthorpe* in the county of *Leicester*, the sessions confirmed the order, subject to the opinion of this Court on the following case. The pauper was bound apprentice by the sole churchwarden and the overseers of the parish of *Dingley*, to *John March* of *Countesthorpe*, by the following indenture, "This indenture made the 27th day of *February* 1816, between *John Rhoades* sole churchwarden, *William Clarke* and *Stephen Hands*, overseers of the poor of the parish of *Dingley*, in the county of *Northampton* of the one part, and *John March* of *Countesthorpe* in the county of *Leicester*, frame-work knitter, of the other part, witnesseth that the said churchwardens and overseers of the poor of the said parish of *Dingley*, by and with the consent of two of His Majesty's justices of the peace for the said county, dwelling in or near the said parish, whereof one is of the quorum, have put and placed and by these presents do put, place, and bind *Thomas Watts*, aged fourteen years or thereabouts, a poor child of the said parish, whose parents are not able to maintain him, with him the said *John March*, and as an apprentice with him to dwell and serve from the day of the date of these presents, until the said apprentice shall accomplish his full age of 21 years, according to the statutes in such case made and provided." (The usual covenants were then inserted). The indenture was duly executed and attested, and in the margin the magistrates stated their consent in these words: "We, whose names are hereunder written, justices of the peace for the county aforesaid (whereof one is of the quorum), do consent to the putting forth *Thomas Watts* an apprentice, according to the true intent and meaning of this indenture, *E. Griffin, Jas. Ord.*" The magistrates who signed the allowance of the indenture, were magistrates of the county of *Northampton*, and

By a parish indenture which purported to be made between the churchwarden and overseers of the parish of *D.*, in the county of *Northampton*, of the one part, and *A. B.* of *Countesthorpe*, in the county of *Leicester*, of the other part, it was witnessed that the said churchwarden and overseers of the parish of *D.*, with the consent of two of his majesty's justices of the peace for the said county, dwelling in or near the said parish, had bound, &c.:

The justices in their written consent in the margin of the indenture, described themselves as justices of the county aforesaid.

(a) 4 T. R. 732.

(b) See *Rex v. Inhabitants of Baildon*. 3 B. & Ad. 427.

said: Held, that the words *county aforesaid*, had the same meaning as the words *said county* in the body of the indenture; and, that it sufficiently appeared, by the reference to the latter words, that the consenting justices were justices of the county of *Northampton*.

also for the county of *Leicester*. The pauper served more than forty days in *Countesthorpe* under the apprenticeship. The question for the Court was, whether he could gain a settlement by service under this indenture. — LORD TENTERDEN C. J. The case of *Rex v. Hinckley* would be an authority to shew that the words “*county aforesaid*,” in the allowance in the margin of the indenture, are to have the same meaning as the words “*said county*” in the body of the indenture; but it unfortunately happens in this case, that two counties are mentioned in the body of the indenture before the words “*justices of the peace for the said county*,” and that *Leicester* is the one last named; whereas the justices who give the required consent, should be justices of the county of *Northampton*. I think we cannot intend that the county of *Northampton* was meant, merely on the ground that the indenture would otherwise have no effect. It seems to me, however, that it does sufficiently appear here, by the other parts of the instrument, that the words *said county* refer to the county of *Northampton*. The indenture states, “that it was made between the churchwarden and overseers of the poor of the parish of *Dingley* in the county of *Northampton*, of the one part, and *John March of Countesthorpe* in the county of *Leicester*, of the other part; and it then witnesses, “that the said churchwarden and overseers of the poor of the *said parish of Dingley*,” (which had before been described to be in the county of *Northampton*,) “with the consent of two justices for the *said county dwelling in or near the said parish*, have put,” &c. Now, reading the instrument as a man wishing to understanding it, would read it, I should understand the words *justices of the said county*, as referring to the justices of that county in which *Dingley* is situate, and that was the county of *Northampton*. — LITLEDAL J. I think we are not at liberty to intend that the words *said county* refer to *Northampton*, because otherwise the instrument would be void; but I think it does sufficiently appear here, that the justices consenting were justices of the county of *Northampton*. First of all, it describes the binding parties as the churchwarden and overseers of the poor of the parish of *Dingley* in the county of *Northampton*, and it afterwards says, that the said churchwarden and overseers of the poor of the *said parish of Dingley*, with the consent of two justices for the *said county*, dwelling in or near the *said parish*, &c. The words *said parish of Dingley*, mean the parish of *Dingley* in the county of *Northampton*; and if the latter words had been again repeated, there could be no doubt that the words “*said county*” meant the county of *Northampton*. The effect of the word *said parish of Dingley*, is to incorporate, by relation, those words as part of the description of the parish of *Dingley*. — PARKE J. Looking at the whole of the instrument together, I think that no person who reads it with the intent of putting a reasonable construction on it, and not of overturning it, can doubt the meaning. *Rex v. Hinckley* (a) decides, that the words *county aforesaid* in the margin are to have the same meaning as the words *said county* in the body of the indenture; and here, looking at the context of the instrument, I have no doubt that the words *said county* mean the county of *Northampton*. — TAUNTON J. The last county named before “*justices for the said county*,” undoubtedly is *Leicester*, but immediately before those words, there are the words “*said parish of*

(a) 1 B. & A. 273.

Dingley." That parish had been before described as being in the county of *Northampton*. I think, therefore, that the words "justices for the said county," may be read, *justices for that county in which Dingley is*. But, besides, this being a mere formal objection, which goes to defeat justice, ought not to be encouraged; and I should be disposed to put this case upon the broad ground which HOLROYD J. a most learned as well as cautious Judge, took in *Rex v. St. Mary's Leicester*, (a) viz. that where two counties are mentioned in the body of the indenture, so as to make it ambiguous, to which the justices belonged, we should intend that the words *said county* have reference to the county where the justices have jurisdiction, upon the principle, that that construction which supports, and not that which destroys the instrument, should be adopted. — Order of sessions confirmed.

57. *Rex v. Mills*, T. T. 1 W. 4.—2 B. & Ad. 578.—A rule nisi had been obtained for a mandamus to the defendants, two justices of the county of *Essex*, commanding them to consider and determine whether there was any objection to the allowance, and as to the fitness of allowing a certain indenture for the binding of *William Scarff*, a poor boy, belonging to the parish of *Wolverston* in the hundred of *Sanford* in the county of *Suffolk*, and maintained in the general house of industry there, to *Matthew Brook*, of *Wivenhoe* in the county of *Essex*, shipowner and fisherman. The affidavits in support of the rule stated, that *Brook*, a shipowner and fisherman of *Wivenhoe*, being in want of an apprentice, applied to the directors and guardians of the poor of the hundred of *Sanford* in the county of *Suffolk* (incorporated by an act of 30 G. 3. and empowered thereby to bind out poor children residing in the house of industry or belonging to the parish), and that they having satisfied themselves that *Brook* was a man of property and of good reputation, and eligible in all other respects, sent *W. Scarff* (aged sixteen years), belonging to *Wolverston*, and maintained in the house of industry there, upon trial, and after he had staid two months, it was agreed that the binding should take place; that on the 18th of *December* *Scarff* was taken before the acting justices of peace of the hundred of *Sanford* at the petty sessions, pursuant to the 56 G. 3. c. 139. s. 1., and the justices enquired into the propriety of binding him apprentice to *Brook*, and having made all enquiries directed by that statute, declared that they thought it proper he should be bound, and made an order to that effect, and afterwards signed and sealed an allowance of the indenture. On the 29th of *January* 1831, *Brook* applied to the justices of the county of *Essex* assembled in petty sessions (there being eight present, and the defendants being two of them,) for the district in which *Wivenhoe* was situate, for their allowance of the indentures, but the application was opposed by the overseers of the parish of *Wivenhoe*, on the ground that there were pauper boys belonging to *Wivenhoe* whom *Brook* ought in preference to take; and the justices, without enquiring into the circumstances or character of *Brook* (no objection being made to him on those grounds), refused to allow the binding. The affidavits in answer to the rule stated, that the defendants and other said justices assembled in petty sessions, after considering and weighing the application, and hearing the opposition thereto, unanimously

(a) 1 B. & A. 327.

The statute 56 G. 3. c. 139. s. 2. which directs that a parish indenture shall be allowed by two justices of the county into which the apprentice is to be bound, gives those justices a discretion to determine on the propriety of the binding generally, and not merely with regard to the fitness, respectively, of the master and apprentice.

determined not to allow the indentures, for they considered that *Brook* could be provided with a boy, as an apprentice, better adapted for the service, by reason of his having been born and brought up in *Wivenhoe*, (which is situate on the navigable river *Colne*, and a short distance from the sea,) and having knowledge of a seafaring life, of which the boys from *Wolverston* were entirely ignorant; and it was added that the justices were principally influenced in their decision by the consideration that *Wivenhoe* ought not to be liable to have paupers from a distance settled on that parish; and by a wish to do justice and to afford that protection to the parish which they considered themselves bound to give.—**LORD TENTERDEN, C.J.** The justices of the county into which the apprentice is to be bound have a general discretion to consider the propriety of the binding. If they had only a particular discretion, and had not exercised it, the Court would have compelled them to do so; but here they have a general discretion, after enquiring into all the circumstances of the case, to determine on the fitness of the binding; and as they have exercised it, there is no ground for a *mandamus*. The rule, therefore, must be discharged, and with costs.—Rule discharged, with costs.

*An unstamped assignment of a parish apprentice stated that *D. E.*, the new master, in consideration of 3*l.* 10*s.* paid him by *H.*, the old master, agreed to accept the apprentice, &c.: Held that parol evidence was admissible to shew that the money paid on the assignment of the apprentice was parish money; and, therefore, that the instrument did not require a stamp.

58. *Rex v. Llangunnor*, *T. T.* 1 *W.* 4. — 2 *B. & Ad.* 616. — Upon appeal against an order of two justices, whereby *Hannah Thomas*, widow, and *John* her son aged three years, were removed from the borough of *Lloughor*, in the county of *Glamorgan*, to the parish of *Llangunnor* in the county of *Carmarthen*, the sessions confirmed the order, subject to the opinion of this Court on the following case:—The pauper was the widow of one *John Thomas*, whose last settlement was admitted to be the settlement of the pauper and her son. *John Thomas*, when fourteen years of age, was put out apprentice by the parish officers of *Llangendeirne*, in the county of *Carmarthen*, under an indenture, to which those officers were parties, dated the 24th of *October* 1814, and containing the usual covenants, to one *John Morgan*, a tailor, in the parish of *Llanelly* in the same county; he afterwards removed with his master to the parish of *Llanon* in the same county, and there continued to serve under the indenture more than forty days. *Morgan*, whilst in *Llanon*, became poor, and *Thomas* then went, by an assignment, on which the questions in this case arose, to serve *David Elias*, a tailor, in the parish of *Llangunnor* in the said county of *Carmarthen*, and there served more than forty days. The indenture was made the 24th of *October* 1814, and witnessed that *A. B.* and *C. D.*, churchwardens, and *E. F.* and *G. H.*, overseers of the poor of the parish of *Llangendeirne* in the county of *Carmarthen*, with the consent of two justices for the county, bound *John Thomas*, aged fourteen years, a poor child of the said parish of *Llangendeirne*, an apprentice to *John Morgan* of *Blaenyddoygiven*, in the parish of *Llanelly*, tailor, from the date thereof until the apprentice should attain the age of twenty-one years. The indenture was in the usual form. By the assignment, bearing date the 16th of *December* 1818, it was witnessed that *John Morgan*, with the consent of *D. P.* and *M. J.*, two of his majesty's justices of peace for the said county, whose names were subscribed to the consent thereunder written, did thereby assign *John Thomas*, the apprentice, to *David Elias*, of the parish of *Llangunnor* in the said county of *Carmarthen*, tailor, to

serve him during the residue of the term of twenty-one years, mentioned in the indenture, and that the said *David Elias*, in consideration of 3*l.* 10*s.* paid him by *John Morgan*, did agree, accept, and take the said *John Thomas* as an apprentice for the residue of the said term, and did acknowledge himself to be bound by the covenants on the part of *John Morgan*, to be performed, &c. On the production of these instruments in evidence for the respondents, the appellants objected that the assignment could not be received in evidence for want of a stamp, as it purported to be an assignment in consideration of a sum of money paid by *Morgan* to *Elias*. The respondents tendered parol evidence to prove that, although the consideration money therein specified was alleged to be paid by *Morgan*, yet it was, in fact, the money of the parish of *Llanon*, where *Morgan* and his apprentice then resided, and paid by the parish-officer to *Elias*. The appellants objected to the reception of such evidence. The sessions, however, determined to receive it, and *David Elias* being called, said that he received 3*l.* 10*s.* from *Thomas Evans*, as the consideration money for taking the apprentice. *Thomas Evans* said that he was a deputy overseer in *Llanon* in 1818, when the assignment took place, and that he then paid 3*l.* 10*s.* of the parish monies of *Llanon* to *Elias* for receiving *Thomas* as an apprentice. The sessions confirmed the order, subject to the opinion of this Court on the question, whether they ought to have received the parol evidence.—Lord TENTERDEN, C. J. Upon the authority of the cases of *Rex v. Scammonden* (a) and *Rex v. Laindon* (b) I am of opinion that the parol evidence was receivable: and as *John Evans* swore positively that the money was money of the parish, and he is not contradicted, I think the proof was sufficient, and, consequently, that the assignment did not require any stamp to render it admissible.—LITLEDAL and PARKE, Js. concurred.—TAUNTON, J. It is stated in the assignment that “the said *David Elias*, in consideration of 3*l.* 10*s.* paid to him by *John Morgan*, “did thereby agree to accept and take the said *John Thomas* as his “apprentice.” All that is stated with certainty is, that the money was paid by *Morgan*, but whose money it was does not appear. That is a collateral matter, and parol evidence was admissible to explain it.—Order of sessions confirmed.

59. *Rex v. Ide*, M. T. 2 W. 4.—2 B. & Ad. 866.—Upon an appeal against an order of two justices, whereby *John Stroude* was removed from the parish of *Hennock*, in the county of *Devon*, to the parish of *Ide* in the same county, the sessions confirmed the order, subject to the opinion of this Court on the following case:—By indenture, bearing date the 25th of April 1817, made in pursuance of a previous order of two justices, and in conformity to the provisions of the stat. 56 G. 3. c. 139., the pauper *John Stroude* was bound apprentice by the overseers of *Ide*, to *Ambrose Badcock* of the same parish. By an assignment, dated the 2d of May 1817, made pursuant to the provisions of the 32 G. 3. c. 57., and in the form prescribed by the schedule to that act, and with the consent of two justices as directed by the statute, the apprentice was assigned by *Ambrose Badcock* to *James Long* of the parish of *Hennock*, and lived with *Long* in that parish, in service under the assignment, a sufficient

An assignment of a parish apprentice is not subject to the regulations imposed by the statute 8 Anne, c. 9., and need not, therefore, be stamped within two months, nor must the consideration paid for such assignment be set forth in it.

(a) 3 B. & A. 382.

(b) 8 T. R. 379.

length of time to gain a settlement. The assignment was executed by *Badcock* and *Long*, and the two justices; and at the time of the production of it in Court on the hearing of the appeal, it bore a one pound stamp which had been affixed on payment of the penalty a short time before, and more than six months after the date and making of it. *Badcock* paid *Long* 5*l.* as the consideration of this transfer of the apprentice to him; but this was not set out in the assignment, nor was any mention made of it therein. And on this account it was contended by the respondent parish (*Henock*), that no settlement could be gained under it; and the question for the opinion of this Court was, whether the pauper had gained a settlement by his residence and service under this assignment.—*LORD TENNERDEN C. J.* I am of opinion that this instrument was sufficiently stamped, and in due time. It is said that the assignment is within the meaning and provisions of the statute of *Anne*, whereby it is required that the premium paid on the indenture of apprenticeship shall be truly set forth in the instrument; and here the sum paid by the new master to the old is not set out. Therefore the question arises whether an assignment of an indenture of an apprentice is within that statute. Now, it has been often held that acts which impose a charge on the subject, must be construed strictly. The stamp acts, therefore, cannot apply to instruments not specifically designated therein, and hence the modern stamp acts are framed so elaborately to comprehend all possible cases. Unless, therefore, the assignment of an apprentice be distinctly intended in the statute of *Anne*, we cannot hold it to be subject to the duties there imposed. But every word there manifestly applies itself to the original instrument only, and not to a subsequent assignment. Under the late stamp acts, the indenture of apprenticeship, and an assignment thereof, are treated separately, and are made subject to separate duties, which clearly shews that the legislature thought the latter would not be included under the terms used in the statute of *Anne*. The order of sessions must, therefore, be quashed.—*PARKE J.* Considering the strict construction that ought to be put on a statute which imposes duties upon the subject, I think an assignment of this kind cannot be looked upon as included in the statute of *Anne*.—*TAUNTON* and *PATTESON JS.* concurred.—Order of sessions quashed.

60. *Rex v. Halesworth, Appellants.*—*Rex v. The Same, Respondents.*—*T. T. 2 W. 4. 3 B. & Ad. 717.*—On appeal against an order for the removal of *John Carter*, his wife, and child, from the parish of *St. Michael at Thorn*, in *Norwich*, to the parish of *Halesworth*, in *Suffolk*, the sessions confirmed the order, subject to the opinion of this Court upon the following case. A *primâ facie* settlement in *Halesworth* was admitted; but the appellants relied upon a subsequent settlement by apprenticeship in *St. Michael at Thorn*. It appeared, that in 1652, *John Keble* devised certain lands in *Holton* for the relief of the poor of *Halesworth*; half the revenue to be employed for the relief of widows, and the other half towards binding out apprentices. The rents of these lands were received by the churchwardens of *Halesworth*, and were kept in a distinct account, and not mixed with the monies arising from the poor's rates. The father of the pauper, who was a settled inhabitant of *Halesworth*, but residing at *Norwich*, and not at that time receiving parish relief, being unable from poverty to bind out his son, and having heard of

Lands were devised for the relief of the poor of *H.*, one half of the revenue to be employed for the relief of widows, the other half towards binding out apprentices. The rents were received by the churchwardens, and not mixed with the poor's rates, but kept in a distinct account. A parishioner of *H.*, not receiv-

Keble's charity, applied to the churchwardens of *Halesworth* to provide him with the means of putting his son apprentice. They agreed to do so; and by indenture of apprenticeship duly stamped, the pauper, with the consent of his father, bound himself apprentice to *George Holl* of *Norwich* for seven years, at a premium of 10*l.*, which was stated in the indenture to have been paid by the churchwardens of *Halesworth*. The premium, the costs of the indenture, and the expences of providing the pauper with proper clothes, were paid by the churchwardens out of the monies of *Keble's* charity. The indenture was executed by the pauper, his father, and *Holl*; and the pauper served under it more than forty days in the respondent parish; but none of the directions contained in any section of 56 *Geo. 3. c. 139.* had been complied with, either in the binding of the apprentice or the form or execution of the indenture. The court of quarter sessions were of opinion that *Keble's* charity must be considered as a public parochial fund; and that the indenture, not having been duly approved of under the 11th section of the 56 *Geo. 3. c. 139. (a)*, the pauper gained no settlement by serving under it. The Court then desired to hear the other case argued, before giving judgment in this. The appeal in this case was against an order for the removal of *William Clarke* from *Halesworth* to *Laxfield*, in *Suffolk*. The settlement relied upon by the appellants was by apprenticeship, under the following circumstances. *John Smith*, in 1718, devised to the churchwardens and overseers of the poor of the parish of *Laxfield*, and to their successors for the time being, for ever, certain freehold lands in that parish, upon trust that they should apply the rents for a certain period towards erecting a schoolhouse in the said parish, and afterwards, towards the payment of a schoolmaster, and towards the teaching and educating twenty poor boys of the said parish, in reading, writing, and accounts, to be chosen and approved of by the churchwardens, overseers and principal inhabitants for the time being: and further, that 40*l.* of the said rents should be by the said churchwardens and overseers yearly applied towards the putting out to apprentice eight of such twenty poor children to some good handicraft trade, to be computed at 5*l.* per head, and the said eight children to be chosen out and allowed likewise by the churchwardens and overseers and principal inhabitants of the said parish. By indenture of apprenticeship, dated 27th of *March* 1826, the pauper voluntarily bound himself, with the approbation and consent of his father and the churchwardens of *Laxfield*, to *Henry Tillney*, of *Halesworth*, for three years. The consideration to the master was stated to be 15*l.* 15*s.*, gift of *John Smith*, of *Laxfield*, gentleman, deceased, one half to be paid by the churchwardens, or one of them, on the 9th of *May* next ensuing, the remainder on the 11th of *Octo-*

ing parish relief, applied to the churchwardens to provide him with means of apprenticing his son. The son was apprenticed, and the churchwardens paid the premium, costs of indenture, and expence of clothing the apprentice, out of the charity fund: Held, that this was not an indenture by which an expense was incurred by public parochial funds, within 56 *G. 3. c. 139. s. 11.*, and therefore not void for want of the approval of two justices according to that statute.

And in a similar case, where lands were devised to the churchwardens and overseers of *L.* and their successors, upon trust to apply the rents towards educating twenty poor children, and a part thereof yearly towards apprenticing eight of such children, to be chosen out and allowed by the said churchwardens and overseers, and the principal

(a) Which, after reciting that, "the salutary provisions of the 43 *Eliz. c. 2.* are frequently evaded in the binding out of poor children, and the premium of apprenticeship or a part thereof is clandestinely provided by parish officers, who are thus enabled to bind out many poor children without the sanction of justices of the peace," enacts, "that no indenture of apprenticeship by reason of which any expence whatever shall at any time be incurred by the public parochial funds, shall be valid and effectual unless approved of by two justices of the peace under their hands and seals, according to the provisions of the said act and of this act." The act 43 *Eliz. c. 2. s. 5.* empowers the churchwardens and overseers, or the greater part of them, by the assent of any two justices of the peace there mentioned, to bind out poor children apprentices where they shall see convenient, &c.

inhabitants:
Held, that this
also was not a
public parochial
fund within the
meaning of the
act.

ber 1827; and the churchwardens, one of whom executed the indenture, covenanted to pay him the same accordingly. The indenture was not stamped. The pauper served his time under it, in *Halesworth*. He had been educated at *Smith's* school, and the premium and costs of the indenture were paid to the master out of the monies received by the parish officers as trustees under *Smith's* will. None of the directions of 56 G. 3. c. 139. were complied with, either in the binding or in the form and execution of the indenture. It appeared that the parish accounts for *Laxfield*, and the trust accounts, were kept distinct; and the Court of Quarter Sessions found that the charity was a public charity. The order was quashed, subject to the opinion of this Court upon the case. — Lord TENTERDEN C. J. There is some difference in the facts of the two cases, but it will be best to decide both on general principles. In one sense, according to some decisions, the funds in both these cases are funds of public charities, because the bequest is general, and does not designate the individuals to be benefited. In another sense they are parochial also, because they are left for the benefit of persons belonging to the respective parishes. Still the question is, in each case, whether the money be that of a “public parochial fund” within the meaning of the statute 56 G. 3. c. 139. s. 11.? The mischief recited by that section is, that the provisions of the statute 43 Eliz. c. 2. are evaded in the binding out of poor children, and the premium of apprenticeship, or a part thereof, clandestinely provided by parish officers, who are thus enabled to bind out such poor children without the sanction of justices of the peace. It is therefore enacted, that no indenture, by reason of which any expense shall be incurred by the public parochial funds, shall be valid, unless approved of by two justices according to the provisions of this act and the statute of *Elizabeth*. I think the present case is not within the mischief there contemplated. There is no clandestine appropriation of monies of the parish. The funds in question cannot properly be so called, in respect of the purpose for which they are collected, or the manner in which they are raised, since they are not contributed by the inhabitants of the parish. I think a public parochial fund must be one so contributed, or which is applicable to the general purposes of the relief of the poor. Estates devised for the relief of the poor generally would come under this description; but in each of these cases there is a fund left by the bounty of an individual for a certain specified purpose, that is, for the benefit of a particular class of persons. It is not meant to go in relief of the general parish fund, or if so, only to a moderate extent. It does not appear that the intention was to relieve persons actually burdensome to the parish; there might be persons unable to bind out their own children, and therefore objects of this charity, who yet did not require parochial support; and in such cases the fund would be no relief to the parish. It appears to me also that the donors in these cases never intended the objects of their bounty to be under the control of the justices of peace; but that the charity should be, in the one case at the disposal of the churchwardens, in the other (as respects apprentices) at that of the parish officers and principal inhabitants. I am, therefore, of opinion that these are not public parochial funds within the eleventh section of 56 G. 3. c. 139., and that the order of sessions in the first case must be quashed, and that in the second confirmed. — LITLEDAL J. I am of the same opi-

nion. I think the term "public parochial funds" does not apply where particular individuals, or a particular class are pointed out as the objects of their application. The eleventh section of the act 56 G. 3. c. 139. was intended to prevent the clandestine appropriation of parish money by the officers of the parish, in evasion of the statute of *Elizabeth*: it is an enactment for the general regulation of parish funds, not for that of particular charities. And I also think it was not contemplated in these charities that the application of the monies should be interfered with by justices of the peace.—PARKE J. The words "public parochial funds," in the eleventh section, do not mean the poor rate merely, or else that probably would have been the term used. Other receipts applicable to the relief of the poor, as penalties, or funds expressly given in aid of the poor rate, may also be included. But the denomination of "public parochial funds," certainly cannot be applied to lands given for such a special and limited purpose, as is pointed out in these cases. One material consideration is, that if this construction were to prevail, it would defeat the intentions of the testators, who did not mean to give the justices a power of over-ruling the discretion of the parish officers in one case, or of the parish officers and principal inhabitants in the other. And it has been very well pointed out in argument, that these are not cases within the mischief of the act 56 G. 3. c. 139.—TAUNTON J. This is a question of very great importance; for if revenues like these were held to be public parochial funds, it would be of serious consequence to many excellent institutions, established for the bringing up and apprenticing the children of the poor. Such establishments might be entirely perverted from their proper ends, if the children placed out by them were to be considered parish apprentices. But it is not necessary to proceed on grounds of public policy, because, on the strict, technical, legal application of 56 G. 3. c. 139. s. 11., it is clear that such a construction cannot prevail. That section speaks of indentures by reason of which expence is incurred by the public parochial funds; and certainly those in question are, in one sense, public, and in another parochial; but on looking to the preamble as well as the enacting part of this section, it is clear that the legislature did not mean every fund which in some sense was public or parochial. They contemplated such funds as before the passing of the statute were applicable to the binding out of poor children, according to the directions of the statute of *Elizabeth*; but if the churchwardens in one of these cases, and the parish officers and principal inhabitants in the other, had applied these monies to the general purposes of the statute of *Elizabeth*, it is clear they would have misapplied them. There is great force in the observation made by Mr. *Andrews*, that if it had become necessary, the Court of Chancery would, on application, have appointed trustees for the management of this charity, and in that case it could not have been said, that these monies came under the denomination in the statute, of "public parochial funds." Now, although that has not been done, the trusts and objects of the devise in each of these cases are still the same; and the churchwardens and overseers are trustees of the same description as private persons would be if appointed by the Court of Chancery. I am therefore of opinion, that the proceeds of these charities, though in some sense public funds, must yet, with reference to the enactment in 56 G. 3. c. 139. s. 11., be considered

private.—Order of sessions in the first case quashed, that in the second confirmed.

The master of a parish apprentice being resident abroad (where he had remained some years), his steward assigned the apprentice by a written instrument, signed, Lord Viscount C. (the master), by J. P. his steward. J. P. had no special authority to assign this or any apprentice, but he had occasionally made such assignments during Lord C.'s absence, and been allowed the expenses in his account. The assignment was in other respects regular. The steward paid the new master 5*l.*, which was allowed in his account by Lord C. as usual: Held, (assuming that a master can delegate the power of assigning an apprentice, as to which *quære*) that the master must at all events exercise his own discretion in the assignment, and give his express authority to it; that in this case there was no previous authority; and, consequently, that no settlement was gained by service under the assignment. *Quære*, whether a parish apprentice can be

61. *Rex v. Spreyton*, T. T. 2 W. 4.—3 B. & Ad. 818.—On appeal against an order of two justices removing *Josiah Lee* from the parish of *Spreyton*, in the county of *Devon*, to the parish of *Powderham*, in the same county, the sessions quashed the order, subject to the opinion of this Court on the following case:—On the 2d of *October* 1818 an order was made by two justices of the county of *Devon*, under the statute 56 G. 3. c. 139., for binding the pauper, a poor child of the parish of *Powderham*, apprentice to Lord Viscount *Courtenay*, described in the order as of *Powderham* in the said county, and on the following day the pauper was bound accordingly, in the usual form, by indenture referring to the above order, with the allowance of the two justices, to be instructed in husbandry work. The indenture was executed by the churchwardens and overseers of *Powderham*, but not by Lord *Courtenay*. At the time of this binding, Lord *Courtenay* was in a foreign country, where he had been residing for some years, and has continued to reside ever since; but during all that time he kept in his own hands the mansion called *Powderham Castle*, and an estate of between 200 and 300 acres, all within the parish of *Powderham*. This property was under the care of Mr. *John Pidsley*, Lord *Courtenay*'s steward, who, as the general agent of Lord *Courtenay*, conducted all his affairs at *Powderham*, but acted under no power of attorney or written instructions. When the pauper was bound as above mentioned, the steward accepted him as Lord *Courtenay*'s apprentice, and, intending to assign him to a new master, agreed with his mother to take care of him in the parish of *Powderham* till he could get a place for him, and allowed her a weekly sum for his maintenance. Some time afterwards Mr. *Pidsley* agreed with one *Richard Paddon*, living in the parish of *Spreyton*, that *Paddon*, in consideration of 5*l.*, should take an assignment of the apprentice; and accordingly, in *January* 1820, a written instrument bearing a stamp of 1*l.* was drawn up, by which, after reciting the execution of the indenture, it was stated that Lord Viscount *Courtenay*, with the consent and approbation of two justices for the county of *Devon*, did thereby assign the apprentice to *Paddon*, to serve him during the residue of the term of apprenticeship; and that *Paddon*, in consideration of the said sum of 5*l.*, agreed to accept and take the apprentice during the residue of the term, and acknowledged himself, his executors, &c. bound by the agreements and covenants mentioned in the indenture on the part of Lord *Courtenay* to be performed, agreeably to the statute, &c. The instrument was signed "Lord Viscount *Courtenay*, by *John Pidsley* his steward. *Richard Paddon*." The consent of the two justices was added, and subscribed with their names. Mr. *Pidsley* had no special authority, either written or verbal, to assign apprentices in general, or to sign this instrument for Lord *Courtenay*, but did it only by virtue of his general agency. He had on several occasions received parish apprentices on behalf of Lord *Courtenay*, had expended sums for their maintenance, and had paid money on the assignment of them to other masters (which assignments were executed in the same manner as the present), and these sums were always allowed him on the annual settlement of his accounts with Lord *Courtenay*. The

51. which he paid to *Paddon* on this occasion was in like manner allowed. The pauper served the remainder of his term with *Paddon* in *Spreyton*. The questions for this Court were, first, whether the original binding was valid; secondly, whether the assignment was valid.—LORD TENTERDEN C. J. now delivered the judgment of the Court. After stating the facts, his Lordship proceeded as follows. Two objections were relied upon by the respondents; first, that the original binding of the apprentice to Lord *Courtenay*, then residing abroad, was invalid; and, secondly, that the assignment was also invalid. It is unnecessary to decide the first point, as we are all of opinion that the assignment was bad. The statute 32 G. 3. c. 57. s. 7. enacts, “That it shall and may be lawful for any master or mistress of any such parish apprentice as aforesaid, by indorsement on the indenture of apprenticeship, or by other instrument in writing, by and with the consent of two justices of the peace of the county, &c. where such master or mistress shall dwell, testified by such justices under their hands, to assign such apprentice to any person who is willing to take such apprentice for the residue of the term mentioned in such indenture of apprenticeship:” provided that the person to whom the apprentice is to be assigned, shall at the same time, “by indorsement on the counterpart of such indenture, or by writing under his or her hand, stating the said indenture of apprenticeship, and the indorsement and consent aforesaid, declare his or her acceptance of such apprentice,” and acknowledge himself, herself, &c. bound by the covenants on the part of the master or mistress to be performed. It is not expressly said, that the master assigning the apprentice shall himself sign the instrument; but I do not see how it could be valid unless he did, and the form given in schedule (D.) purports to be so signed. But assuming that a person duly authorised by the master might execute the assignment, we think that, in this case, no sufficient authority is shewn. The master ought, at all events, to exercise his own discretion as to the making of the assignment. Here no discretion was exercised on his part. There is no proof of any direction given by him: it only appears, that after the assignment was made, he allowed the expenses of it in his steward’s account. We think that is not equivalent to a distinct authority from Lord *Courtenay* to the steward to execute this instrument for him. No settlement, therefore, was gained by the service in *Spreyton*; and whether the original binding was valid or not, the pauper’s settlement is in the parish of *Powderham*, to which he belonged before the binding, and in which he was bound.—Order of sessions quashed.

bound to a person living abroad, though retaining property in the parish?

Of Apprentices Bound by Public Charities.—1 Bott. pl. 742.

62. *Rex v. Baidon*, E. T. 2 W. 4.—3 B. & Ad. 427.—Upon an appeal against an order of two justices, whereby *B. Hutton*, and *Mary* his wife, and their children, were removed from the township of *Baidon*, in the West Riding of the county of *York*, to the township of *Leeds* in the said ridmg; the sessions quashed the order, subject to the opinion of this Court on the following case:—The respondents proved an indenture, made on the 12th of August 1811, between *B. Hutton*, of the age of fifteen years, of the one part, and *H. Braithwaile*, of the township of *Leeds*, shoemaker of the other

The consideration expressed in an indenture of apprenticeship was 4*l.* to be paid to the master by a public charity; but the apprentice’s mother privately as

to pay, and did pay the master, after execution of the indenture, 1*l.* in addition: Held, that the indenture (though stamped) was void by 8 *Ann.*, c. 9. s. 39., the full sum contracted for, with, or in relation to the apprentice not being inserted.

part, whereby *Hutton*, with the consent of his mother, bound himself apprentice to *Braithwaite* to serve for the term of six years; and *Braithwaite*, in consideration of the sum of 4*l.* paid to him out of the charity of *Christopher Topham* by order of *Charles Walker*, Esq. and others, trustees of the said charity, for the township of *Baildon*, covenanted to teach *Hutton* the art or mystery of a boot and shoemaker. The indenture was executed by *H. Braithwaite*, *B. Hutton*, and by his mother *Elizabeth Hutton*, as consenting thereto. *W. Wainman*, agent to the trustees of the charity, which was created for the purpose of binding out poor children as apprentices, paid the sum of 4*l.* (mentioned in the indenture) to *Braithwaite*, the master, as the consideration for his taking the pauper. No other sum of money was contracted for, paid to, or received by the master that *Wainman* knew of; he was present and saw the indenture executed, and witnessed the same. The appellants, however, proved that, before the boy was bound, the mother entered into an engagement with the master to give him 1*l.*, in addition to the 4*l.* to be paid by the charity; and that after the indenture was executed, she paid him the 1*l.* accordingly. The 1*l.* was not mentioned in the indenture, but there was a proper and sufficient stamp. The question for the opinion of this Court was, whether, under the circumstances stated, the consideration for the binding was set out in the indenture, according to the provisions of the statute 8 *Ann.* c. 9. s. 39.? If the Court should be of opinion that it was not, then the order of sessions was to stand; but if they should be of opinion that it was, then the case to be sent back to the sessions, to be further heard upon the merits. LORD TENTERDEN, C. J. The object of the legislature undoubtedly was to secure the insertion in the indenture of the whole sum paid or contracted for with the apprentice. But the thirty-ninth section evidently refers to cases where a duty is payable, whereas in *Rex v. Oadby* (a) no duty whatever was payable, because the whole premium was defrayed by public charity. That is not so here. Then it is said, that according to *Rex v. Bourton upon Dunsmore* (b), unless there be a binding contract for the payment of the sum with the apprentice fee, it need not be inserted in the indenture. But there the decision turned upon the disability of the contracting party, who was a feme covert. Here we cannot presume that the pauper's mother (who is named as the consenting party in the indenture) was a feme covert. It is said that the contract for the additional sum was void by the act of parliament, and that the master could not have sued for this sum, which was not mentioned in the indenture. We are not called upon to decide how that would have been, if an action had been brought by the master; because the clear intention of the legislature was, that every thing received, given, paid, secured, or contracted to be paid with the apprentice, should be inserted in the indenture. Here there was a contract to pay a sum not inserted. A party capable of contracting, and making such a contract, though it were honorary, might not know that the statute would protect him from its performance; but a married woman must be presumed to know that she is not liable upon a contract made by her. Perhaps it would have been better if the legislature had enacted, that all engagements to pay more than the sum mentioned in the

(a) 1 B. & A. 477.

(b) 9 B. & C. 872.

indenture should be utterly void. But the words of the statute, as they bear upon this case, are so unambiguous, that without repealing the clause we cannot hold this indenture to be valid.—LITTLEDALE, J. The principal object of the statute of *Anne* was to compel the payment of a duty in proportion to the amount of premium paid with the apprentice. Section 32. directs that the duty shall be paid by the master. If it were to be paid by the person putting out the apprentice, it might then have been said to be sufficient to require insertion of the sum paid by him; but the master must know, where two or three contribute, what is paid in the whole. The words of the statute are too plain to be got over.—PARKE J. The indenture is void, within the express words of the 8 *Ann. c. 9. s. 39.* The question is, whether every sum of money contracted for, with, or in relation to the apprentice, was inserted in this indenture? Now, what was the sum contracted for at the execution of the indenture? It is stated that the pauper's mother (who must be taken to be a *feme sole*), before he was bound, entered into an engagement with the master to give him 1*l.*, in addition to the 4*l.* to be paid by the charity. In *Rex v. Bourton upon Dunsmore* (a) the woman was married, and incapable of making any contract; and if she had been competent, the promise was not to pay any specific sum. It has been said that the present agreement was void, as being a fraud on the trustees of the charity; but the case does not shew that they agreed to give 4*l.* on the faith that no more was to be given. If it had been so, the agreement by the mother might, perhaps, have been void, within the case of *Jackson v. Duchaire* (b).—PATTESON J. The mother, in this case, contracted for payment of a sum *with or in relation to* the apprentice, within the words of section 39., and nothing can be stronger than those words are (c).—Order of sessions confirmed.

63. *Rex v. Aylesbury, E. T. 2 W. 4.—3 B. & Ad. 569.*—Ante, pl. 55.

tees of a public charity. The master covenanted to find him meat, drink, apparel, washing, &c. before the execution of the indenture, the father of the pauper, who was not a party to it, agreed with the master to find the pauper clothing and washing during the term; and he did so. It did not appear that the trustees were privy to this engagement: Held, that the indenture did not require to be stamped, because either the agreement by the father to provide clothes was not a thing secured to be given to or for the benefit of the master, within the 55 *Geo. 3. c. 184. sched. part. 1. tit. Apprenticeship*, or, assuming that it was, then it was void as being a fraud on the trustees, who had bound out the apprentice on the faith that the master was to provide clothes.

A pauper was bound apprentice by the trustees

Of Apprentices to Chimney Sweepers.—1 Bott. pl. 573.

64. *Rex v. Hipswell, T. T. 9 G. 4.—8 B. & C. 466.*—Upon an appeal against an order of two justices, whereby *Elizabeth Miller*, widow, and her four children, were removed from the township of *Morpeth*, in the county of *Northumberland*, to the township of *Hipswell*, in the parish of *Catterick*, in the county of *York*, the sessions confirmed the order subject to the opinion of this Court on the following case. The pauper's husband, *Joseph Miller*, the son of *Jane Salkeld*, the wife of *Thomas Salkeld*, was, at the age of five years, bound by the said *Thomas Salkeld*, by the name of *Joseph Salkeld*, an apprentice to *William Wright*, a chimney-sweeper, under

The statute 28 *G. 3. c. 48. s. 4.* makes void all indentures whereby children under eight years of age are bound apprentices to chimney-sweepers, and no settlement can be gained by serving under them.

(a) 9 *B. & C. 872.*

(b) 3 *T. R. 551.*

(c) See also Sect. 43.

the following indenture: " This indenture, made the 21st day of May, in the forty-fourth year of the reign of our sovereign lord *George the Third*, &c. between *Thomas Salkeld*, of *Alston Moor*, in the county of *Cumberland*, yeoman, and *Joseph Salkeld*, his son of the one part, and *William Wright*, of the township of *Hipswell*, chimney-sweeper, of the other part; witnesseth that the said *Joseph Salkeld*, hath of his own free will, and with the consent of his said father, put and bound himself apprentice to and with the said *William Wright*, and with him, after the manner of an apprentice, to dwell, remain, and serve from the day of the date hereof, for, during, and until the term of seven years thence next following be fully completed and ended; during all which term the said apprentice his said master well and faithfully shall serve, his secrets shall keep, &c. in the usual form. And the said *William Wright*, the master, in consideration of such service so to be done and performed, doth for himself, his executors, &c. covenant, promise, and grant by these presents, to and with the said *Joseph Salkeld*, the apprentice, that he the said *William Wright*, his executors, &c. shall and will teach, learn, and inform him, the said apprentice, or cause him to be taught, learned, and informed in the art, trade, or mystery of a chimney-sweeper, which the said master now useth, after the best manner of knowledge that he or they may or can, with all circumstances thereunto belonging. And also shall find and provide to and for the said apprentice sufficient and enough of meat, drink, washing, lodging, and clothes, fit and convenient for such an apprentice. In case of the master's death within the said term, the apprentice is to be at liberty, and choose a master for himself. And for the true performance of all and singular the covenants and agreements aforesaid, each of the parties aforesaid doth bind himself unto the other firmly by these presents. In witness whereof, the parties above named to these present indentures interchangeably have set their hands and seals the day and year above written." The pauper's husband, *Joseph Miller*, so bound by the said indenture under the name of *Joseph Salkeld*, served under it as an apprentice to the said *William Wright*, during the time specified in the same indenture, in the township of *Hipswell*, where he resided during the same period. And the court of quarter sessions was of opinion that he thereby gained a settlement in that township.—*BALY-LEY J.* The title of the stat. 28 G. 3. c. 48. is general, " For the better regulation of chimney-sweepers and their apprentices," and the recital is, " That the laws in being respecting masters and apprentices are not sufficient to prevent the complicated miseries to which boys employed in climbing and cleansing chimneys are liable." Then the first section gives the parish officers power to bind under certain circumstances. The second section contains a regulation applicable to parish apprentices. The third enacts, that a particular form of indenture shall be adopted, and this form is equally applicable, whether the binding is by the parish officers or the parents of the child. It is not, however, necessary to decide whether those clauses apply to all bindings, because the fourth and some other sections clearly extend to cases of bindings by parish officers or parents, and reach all bindings or bargains of apprenticeship or service. The fourth section begins by enacting, that all indentures, &c. for binding any boy under eight years of age as an apprentice to a chimney-sweeper, " than is by this act limited," shall be void in the law to all intents

and purposes. The words "than is by this act limited," are not sensible; but it is manifest that the legislature intended to make all indentures void where the child bound to a chimney-sweeper is under eight years of age. If there were any doubt upon this, it would be removed by the latter part of the clause, the meaning of which is perfectly clear: "That every person who shall from henceforth have, take, employ, retain, or keep any such boy as or in the nature of an apprentice or servant, employed in the capacity of a climbing-boy or chimney-sweeper as aforesaid, who shall be under the age of eight years as aforesaid, contrary to the tenor and true meaning of this act, and being convicted thereof as hereinafter mentioned, shall forfeit and pay for every such apprentice or servant so by him or her had, taken, &c. any sum not exceeding 10*l.*, nor less than 5*l.*" But it is said that *void* is sometimes construed *voidable*, and where the provision is introduced for the benefit of the parties only, such a construction may be right, but where it is introduced for public purposes, and to protect those who are incapable of protecting themselves, it should receive its full force and effect. Here I think it would be contrary to the spirit of the act to consider the indenture voidable only. The consequence is, that no settlement was gained under it.—LITTLEDALE J. concurred.—Order of sessions quashed.

SETTLEMENT BY BIRTH.

Of Illegitimate Children.—2 Bott. pl. 22.

65. *Rex v. Great Salkeld*, T. T. 57 G. 3.—6 M. & S. 408.—On appeal, the quarter sessions confirmed an order for the removal of *Lancelot Walker*, otherwise *Nicholson*, his wife and children, from the township of *Morland*, in the county of *Westmorland*, to the parish of *Great Salkeld*, in the county of *Cumberland*, subject to the opinion of this Court on the following case:—The pauper had not gained a settlement by any act of his own. His mother, *Catherine Nicholson*, was born in the parish of *Bongate*, in *Westmorland*. About forty years ago, she then being a single woman, and pregnant with the pauper, was removed by order of two justices from *Great Salkeld* to *Lowther*, in *Westmorland*. *Lowther* appealed, and the order was confirmed at sessions, but on a case stated was quashed by this Court. (a) While the appeal was depending, and before the decision of this Court, the said *Catherine* was delivered of the pauper in *Lowther*, he being a bastard. Soon after the order had been quashed in this Court, the mother returned to *Great Salkeld*, and was removed from thence into the parish of *Bongate*, whether by an order of removal or not did not appear; and the parish officers of that parish received her, and agreed to maintain her, and said she must nurse her child, who was then at the breast. When the pauper was between six and seven years of age, and was residing with his aunt, *Ann Nicholson*, at *Great Salkeld*, the mother then being absent in service, the overseer of *Bongate* came over to *Great Salkeld*, and paid the aunt some arrears of parish relief then due to her for the maintenance of the child; and said, that as the child was then so

A bastard born in *L.*, pending an order of removal of his mother from *S.* to *L.* (which was afterwards quashed), was held to be settled in *S.*, and relief given to him by the parish officers of the parish which was the birth settlement of the mother, was held not to raise a presumption, under the circumstances of his settlement there.

(a) See *Rex v. Lowther*, Burr. S. C. 674.

old it might begin to earn something for itself by driving cows, and that he would take it away for that purpose. Upon the aunt's grieving to part with the boy, he threatened to diminish the weekly allowance of parish relief, if she would not permit him to take the boy from her. The question for the opinion of the Court is, Whether, under the circumstances stated, the order of removal was properly confirmed.—Lord ELLENBOROUGH C. J. The birth settlement of the pauper, though in fact born at *Lowther*, was in *Great Salkeld*; for there he was in judgment of law born; because the order of removal being vacated, the mother's right to be in *Lowther* was void *ab initio*.—BAYLEY J. I am entirely of the same opinion. If the circumstances were sufficient to raise a presumption of the pauper's settlement being in *Bongate*, it was for the sessions, and is not for this Court, to draw that conclusion. But I cannot see any ground for such a presumption. The pauper being a bastard, and not having gained any settlement of his own, his birth-place is *primâ facie* the place of his settlement. *Lowther* was, in fact, his birth-place, but that happened by the wrongful removal of his mother, as it afterwards turned out, from *Great Salkeld*. Therefore, it would be great injustice on the township of *Morland*, if by this removal it were prevented from removing to *Great Salkeld*, the real place of his birth. For, in contemplation of law, the child shall be deemed to be born in that parish whence the mother was improperly removed, if it be born during the suspension of the order of removal by appeal, and the order be finally vacated. And this is upon the principle that no one shall take advantage of his own wrong.—ABBOTT J. I am also of opinion that this pauper must be considered as born in *Great Salkeld*. An illegitimate child is, as it cannot derive a settlement from its parents, in the first instance settled where born; but where the mother is improperly removed, the law says, that the parish whence the removal was made, and where but for this the child would have been born, is to be considered as the place of birth.—HOLROYD J. I am of the same opinion. In consideration of law it is exactly the same as if the child had been actually born in *Great Salkeld*.—Order confirmed.

Where a parish was divided into two districts, *L.* and *M.*, each separately maintaining its own poor, and removing from one to the other, and a woman, who was settled in *M.*, was removed from a third parish to *L.* by order of removal directed to *L.*, which order was quashed upon appeal, and pending the appeal, the woman was delivered in *L.* of a bastard child, and afterwards the woman and her child having been received back by the removing parish, were removed by order to *M.*: Held, that the child's settlement was not in *M.*, but in the removing parish.

66. *Rex v. Saint Andrew, Holborn, (Saffron Hill, Middlesex.)* T. T. 57 G. 3.—6 M. & S. 411.—Upon appeal, the quarter sessions for the county of Gloucester confirmed an order for the removal of *Mary Aldridge* and her child from the parish of *Painswick* to the parish of *St. Andrew, Holborn, Saffron Hill*, subject to the opinion of this Court upon the following case:—The division of *St. Andrew, Holborn, Saffron Hill, Middlesex*, and of *St. Andrew, Holborn, London*, although divisions of the same parish, have separate overseers, make separate rates, try appeals on mutual orders of removal, and, as far as concerns the maintenance of the poor, are in all respects separate districts. Pending an appeal upon an order removing the pauper as a single woman with child, from *Painswick* to *St. Andrew, Holborn, London*, she was delivered of the child in the latter district. The judgment of the quarter sessions on the appeal was against *Painswick*, for misdirection of the order of removal, and *Painswick*, accordingly took back both the mother and child from

the district of *St. Andrew, Holborn, London*, and removed them by a fresh order to the now appellant district of *St. Andrew, Holborn, Saffron Hill*. The settlement of the mother is admitted to be in the appellant district, and the only question for the opinion of the Court is, Whether the same district is also the place of the child's settlement. *Per Curiam*. The statute has no regard to orders of removal improperly made, so as to give them a kind of floating existence until the blunder is cured by a fresh order. The order in question to the wrong district, is the same as if it had been directed to a wrong parish.—Order quashed as to the child.

67. *Rex v. Martlesham*.—Upon an appeal against an order of two justices, whereby *H. Athrol, alias H. Walford* was removed from *Playford to Martlesham*, the sessions confirmed the order, subject to the opinion of this Court on the following case:—*Sarah Athrol*, single woman, being pregnant, was removed by the order of two justices from *Playford to Stutton*. Before the sessions, she was delivered at *Stutton* of the pauper, a bastard. At the sessions *Stutton* appealed, and the justices quashed the order. It was admitted on the present appeal, that the mother, at the time of the bastard's birth, belonged to the parish of *Martlesham*.—BAYLEY J. It is quite clear that a bastard cannot gain a settlement by parentage. The pauper was not therefore legally settled in *Martlesham*, and the order of sessions must be quashed.—Order of sessions quashed.

S.: Held, that, the bastard was not settled in the parish of *M.*

An unmarried woman settled in the parish of *M.*, was removed from the parish of *P.* to the parish *S. S.* appealed, and the sessions quashed the order of removal, but before the appeal was heard the woman was delivered of a bastard child in the parish of *M.*

68. *Rex v. Halifax, E. T. 1 W. 4.—2 B. & Ad. 211*.—On appeal against an order of two justices, removing *Ann Smith*, and *Thomas* her child, from the township of *Halifax* to the township of *Manchester*, the sessions confirmed the order as to *Ann*, but discharged it as to the child, subject to the opinion of this Court upon the following case:—The pauper, *Ann Smith*, who was settled in *Manchester*, lived at *Halifax* in *January 1829*, and was then pregnant of a child likely to be born a bastard. On the 30th of *January*, by an order of two justices made before, but executed after the *Epiphany* quarter sessions, she was removed to *Manchester*, and delivered to the overseers of the poor there. They requested her to go into the workhouse, but she refused, and on the next day (*January 31st*) returned to *Halifax*, where she remained till the 20th of *February* following, and was on that day delivered of a bastard, the child mentioned in the order. The *Easter* sessions for the West Riding of *Yorkshire*, in which *Halifax* is situate, were holden on the 27th of *April*; and by the practice of those sessions, when an order of removal is appealed against, there must be ten days' notice previous to the sessions; but no notice of appeal was given against this order, nor was any appeal entered against it at the *Easter* sessions. The return of the pauper, *Ann Smith*, from *Manchester* to *Halifax* was without the concurrence or knowledge of the appellants or respondents, and no fraud was imputable to either. The point made for the respondent was, that as the pauper, *Ann Smith*, had been removed after the *Epiphany* sessions, and had returned of her own accord, and without any notice, into the respondent township, and had been there delivered of the bastard child whose settlement was in question, without the knowledge of the respondents, before the time of giving notice of appeal for the next sessions had expired,

An unmarried pregnant pauper was removed by an order of justices from *H.* to *M.*, and received by the parish officers there. On the following day she clandestinely, and of her own accord, returned to *H.*, where she was delivered of a bastard, before the time for appealing against the order of removal had expired. The bastard was settled where born.

the order must be considered as pending, and the settlement of the child must follow that of the mother.—**LORD TENTERDEN C. J.** I am of opinion that the order of sessions was right.—**LITLEDAL J.** It seems to me that in this case the child was settled in the place of its birth, according to the general rule on the subject of bastards. There is an exception to that rule where the child is born while the order is under execution, and before it can be completely fulfilled; the interruption happening by the act of God, and the officers having done all in their power to carry the order into effect: as where the birth takes place on the road, or during detention by floods. But here the order had been executed, and the woman afterwards returned from the appellant to the respondent township, without any fraud on the part of either. It is admitted, that if the child had been born after the time for appealing had expired, the settlement would have been good; and I think it is the same in this case, as there was no appeal depending at the time of the birth. *Landinaboe v. Much Birch* seems an authority to the contrary; but the reporter himself questions that case, and admits that it was not well considered.—**PARKE J.** The order in this case had been executed, and the parish officers of *Manchester* had received the pauper; and after that she returned to *Halifax*, and was there delivered. The parties stand on just the same footing as if this had happened after the order and had been appealed against, and confirmed at sessions. An order can no more be said to be pending during the time in which an appeal may be instituted, than a judgment while a writ of error may be brought. Here was a complete execution of the order; no fraud appears in the appellants, and the overseers of *Manchester* had no power to detain the pauper there. The order of sessions must, therefore, be confirmed.—**PATTERSON J.** The order had been completely executed, and was not depending. Although the pauper became a vagrant by returning to *Halifax*, that can make no difference in the question between these parishes.—Order of sessions confirmed.

Under the statute 59 G. 3. c. 12. s. 33. an Irish female pauper having a bastard child born in a parish in England, and within the age of nurture, may, on becoming chargeable, be passed to Ireland, though the child cannot be sent with her, the act not authorizing the removal of any settled person.

69. *Rex v. Bennett, T. T. 1 W. 4.—2 B. & Ad. 712.—Catherine Hines*, an Irish pauper, being pregnant, was, at her own request, on the 9th of *March* 1831, admitted into the workhouse belonging to the parish of *St. Luke, Middlesex*, and on the 23d was there delivered of a male bastard child. She resided in the workhouse from the time of her admission; and was, during that time, chargeable to the parish. On the 6th of *May* the parish officers took her before the defendants, *William Bennett Esq.* and *Robert Edwards Broughton Esq.*, two magistrates for the county, and required them, by a pass under their hands and seals, to cause her to be removed, and her infant child also, for the purpose of nurture. They refused so to do. A rule nisi was afterwards obtained for a mandamus to compel them to sign an order or pass for the removal of the pauper with her male bastard child (for nurture only) from the said parish of *Saint Luke to Ireland*, in the manner directed by the statutes in such case made and provided.—**LORD TENTERDEN C. J.** The difficulty is in saying what precisely ought to be done under the statute 59 G. 3. c. 12. s. 33., which provides for the removal of *Irish and Scotch* paupers in the mode pointed out as to rogues and vagabonds by 17 G. 2. c. 5. s. 13, 14. It was said, in support of the rule, that where a woman settled in one parish in *England* had a bastard child born in another parish also in *England*, it had been

usual to remove the child with the mother for nurture, and that it was then taken care of by the parish to which it was sent, at the expense of the parish where it was settled by birth. On the other hand it was contended, that the child having a settlement in the parish where it was born, the act of parliament gave the justices no power to remove it; and it was observed, that where a child was removed with its mother from parish to parish in *England*, no difficulty arose, because one parish or the other was obliged to give it present support, but that in *Ireland*, where there are no poor laws, there was no parish which could be called upon to nurture the child, nor any one to enforce maintenance from the place of its birth. There was much weight in those observations. There may certainly be great inconvenience in separating the mother and child; still, if the law gives no authority to remove the child, that inconvenience cannot be avoided, while the law continues as it is. And it is clear that by 59 G. 3. c. 12. s. 33., no such power is given. That section requires two justices, upon complaint that any person born in *Scotland* or *Ireland* hath become chargeable to a parish by himself or herself, or his or her family, to enquire whether he or she, or any of his or her children have any settlement in *England*, and if it shall be found that such person was born in *Scotland* or in *Ireland*, has no settlement in *England*, and has become chargeable to such parish by himself or his or her family, then by a pass to cause such poor person, his wife, and such of his or her children as shall not have gained a settlement in *England*, to be removed to the place of his or her birth in the manner directed by the 17 G. 2. c. 5. s. 13. and 14. The statute, therefore, authorizes and requires the justices to remove to *Ireland* the mother who has not gained any settlement in *England*; but it gives them no power to remove the child which has acquired a settlement there by its birth. There may undoubtedly be hardship in removing the mother without the child, but that must be submitted to, for the act is imperative. The rule, therefore, must be made absolute as to the removal of the mother, and discharged as to that of the child.—Rule absolute for the removal of the mother,—discharged as to that of the child.

SETTLEMENT BY PARENTAGE.

Of Emancipation.—2 Bott. pl. 84.

70. *Rex v. Lytchet Matraverse*, T. T. 8G. 4.—7 B. & C. 226.—Upon appeal against an order of two justices, whereby J. Orchard and his wife were removed from the parish of *Lytchet Matraverse*, in the county of *Dorset*, to the parish of *Saint James*, in the town and county of *Poole*, the sessions quashed the order, subject to the opinion of this Court on the following case:—The pauper never acquired any settlement in his own right: his father was settled in the parish of *Lytchet Matraverse*; and whilst he was so settled, the pauper hired himself by contract to serve for two summers and a winter on board a ship trading to *Newfoundland*. In the month of *February* or *March* 1816, being then twenty years of age, he entered upon that service, in which he continued during the stipulated time. There was no evidence that the father exercised any control over him during

A pauper, twenty years of age, whose father was settled in the parish of A., contracted to serve the captain of a ship two summers and a winter. He continued in the service until he attained twenty

one years of age; but before that time his father acquired a settlement in another parish: Held, that the pauper was not emancipated before he attained the age of twenty-one, and, consequently, that his settlement followed that of his father.

the period of his service. He attained his age of twenty-one years before his return from the voyage. Shortly after he had left this country, and before he had attained his age of twenty-one years, his father acquired a settlement in the parish of *St. James*, in the town and county of *Poole*. On the pauper's return from *Newfoundland*, he went to reside in his father's house, who before that time had left *Poole* and returned to *Lytchet Matraverse*. After a few weeks he left his father's residence, and lived with his sister, working on his own account as well then as during his residence with his father. The sessions were of opinion that the pauper was emancipated at the time when his father acquired the settlement in *Poole*.—BAYLEY J. The question in this case is, whether at the time when the father gained a settlement in the parish of *Saint James, Poole*, the pauper was emancipated? If he was not, then his settlement would shift with that of his father. The father was settled in the parish of *Lytchet Matraverse*, and whilst he was so settled, the pauper, his son, being then a minor, hired himself to serve for two summers and a winter. He entered into, and continued in the service until he attained twenty-one years of age, but before he had attained that age his father had acquired a settlement in *Poole*. There can be no doubt that the settlement of a son, if he have none of his own, shifts with that of the parent so long as the son continues part of the parent's family. When he ceases to constitute part of the parent's family, he is emancipated. The different instances of emancipation put by Lord *Kenyon* in *Rex v. Offchurch* (a), and *Rex v. Witton cum Twambrooks* (b), and recognised by Lord *Ellenborough* in *Rex v. Uckfield* (c), are the child's attaining its full age, or being married, or gaining a settlement, or, as in the case of the soldier, contracting a relation inconsistent with the idea of his being in a subordinate situation in his father's family. In *Rex v. Roach* (d), Lord *Kenyon* qualified what he was reported to have said as to a son's being emancipated on attaining the age of twenty-one years, by limiting that observation to cases where the son at that age was severed from his father's family; and then adverting to the case of the soldier, he observes that the soldier had ceased to be under the control of his parents, and had become subject to the control of others; and that as he did not return to the father until after he was of age, the case was thought too clear for argument. It is insisted that this case falls within the fourth class of cases mentioned by Lord *Kenyon*, and that the pauper, as soon as he entered into the contract, like the soldier who had enlisted, was emancipated, because he had subjected himself to the control of others, and continued so subject until he had attained twenty-one. But there is this distinction between the case of the soldier and the present: the soldier, by enlisting, became subject to an authority paramount to that of his parent: here the pauper, by contracting to serve the owner or captain of the ship, subjected himself to an authority not paramount, but subordinate to that of his parent; for, by the law of *England*, the parental authority continues until the son attains the age of twenty-one. This distinction is pointed out by *Holroyd* and *Best* Js. in *Rex v. Rotherfield Greys* (e): the latter there says, "By the general policy of the law

(a) 3 T. R. 114.

(b) 3 T. R. 355.

(c) 5 M. & S. 216.

(d) 6 T. R. 247.

(e) 1 B. & C. 348.

" of *England* the parental authority continues until the child attains the age of twenty-one years; but the same policy also requires, that a minor shall be at liberty to contract an engagement to serve the state. When such an engagement is contracted, it becomes inconsistent with the duty which he owes to the public, that the parental authority should continue." *Lawrence J.* in *Rex v. Roach* (a) seems to take the same view of the subject, and to consider the authority of the state paramount to that of the parent so long as the minor continues in the public service, but as soon as he leaves it, then the parental authority is restored. He there says, " In the case of the soldier, the son was enlisted when he was under age, and if he had returned home before he was twenty-one, he would have been considered as part of his father's family; or, if he had quitted the army before twenty-one without returning home, the father might have reclaimed him by suing out a habeas corpus." *Blackstone*, in his *Commentaries*, vol. i. p. 453. says, " The legal power of a father over the persons of his children ceases at the age of twenty-one, for they are then enfranchised by arriving at the years of discretion, or that point which the law has established, when the empire of the father or other guardian gives place to the empire of reason. Yet, till after that age arrive, the empire of the father continues, even after his death; for he may by his will appoint a guardian to his children. He may also delegate part of his parental authority, during his life, to the tutor or schoolmaster of his child, who is then in loco parentis, and has such a portion of the power of the parent committed to his charge, viz. that of restraint and correction, as may be necessary to answer the purposes for which he is employed." It appears, then, that in ordinary cases the authority of a father over his child continues until the age of twenty-one. But the case of a soldier is an exception from the general rule. For an infant may by law enlist, and become bound to serve the state; and if he does contract to serve and the state adopt him as their servant, that adoption severs him from his father's family, and he then becomes subject to the paramount control of the state. In *Rex v. Woburn* (b), the son enlisted at the age of sixteen into the same regiment of militia in which his father served, and lived with him to the age of twenty-three. Lord *Kenyon* thought as he lived in his father's family, the parent's control was not altogether destroyed, the guidance and direction of the child to a certain extent not being inconsistent with the occasional military situation in which he was. He seems to have thought that such a person might be subject to a double control. So in this case, if the father did not interfere, the son might be subject to the control of his master whom he had contracted to serve, but being part of his father's family, and subject to his paramount authority, the latter might have claimed his services at any time before he attained the age of twenty-one years. But in the case of a minor who enters into the army, the state will be entitled to his services, and against the public the father cannot claim them. Considering the principle upon which a minor who enlists as a soldier becomes emancipated to be, that he thereby contracts a relation inconsistent with a subordinate situation in his father's family, and considering that a minor who

(a) 6 T. R. 254.

(b) 8 T. R. 479.

contracts to serve a subject, thereby makes himself liable to the double control of his father and his master, the authority of the parent being paramount to that of the master, I think that the pauper in this case, when he agreed to serve the owner or captain of the ship, did not contract any relation inconsistent with a subordinate situation in his father's family, but that until he attained twenty-one he continued part of his father's family and subject to his paramount authority. Consequently the sessions were wrong in holding that the pauper was emancipated, and his settlement shifted with that of his father. Their order must therefore be quashed.—Order of sessions quashed.

A pauper, while he was under age, quitted his parent, and went to sea, serving sometimes in a king's ship, at other times in trading vessels, and remained in such service, and so separated from his father's family when he attained the age of twenty-one years: Held, that he was then emancipated, and that his settlement did not afterwards shift with that of his father.

71. *Rex v. Lawford*, E. T. 9 G. 4. — 8 B. & C. 271. — Upon appeal against an order of two justices, whereby *Hannah Nunn*, widow, and her three children were removed from the parish of *Lawford*, in the county of *Essex*, to the parish of *Saint Anne, Limehouse*, in the county of *Middlesex*, the sessions quashed the order, subject to the opinion of this Court on the following case: *John Nunn*, the son of *John* and *Martha Nunn*, the late husband of the pauper *Hannah Nunn*, was born at *Wivenhoe*. *John Nunn*, deceased, was married to the pauper *Hannah Nunn*, he being about twenty-five years of age, and having acquired no settlement in his own right. In 1802, he then being about fifteen years of age, quitted his parents and went to sea, where he continued till the period of his marriage, sometimes serving on board a King's cutter (the *Argus*), and at other times on board different trading vessels, gaining his own living. Up to the age of eighteen his parents resided at *Manningtree*, and whilst there, the vessel on board of which their son was serving being stationed on the river near that town or its neighbourhood, the mother washed for him, and occasional visits were paid by the son to the parents, sometimes of a few days' continuance. During the period from 1805 to 1810, the parents having quitted *Manningtree*, removed to *St. Anne's, Limehouse*, and resided on a tenement of the value of twelve guineas a year; and twice during those five years the son visited them there, and stayed eight or ten days at a time, returning to his ship after each visit. The distance prevented the mother from continuing to wash for the son whilst she and her husband were resident at *St. Anne's, Limehouse*, but she occasionally sent him small sums for pocket-money. The son attained the age of twenty-one whilst his parents were residing at *St. Anne's, Limehouse*. In 1810 the parents quitted that parish, and took a tenement of *£41*. a year at *Gravesend*, on which they resided when the son married, having been in the occupation of it upwards of a year before such marriage. — *BAYLEY, J.* It is very desirable in deciding sessions' cases to act, whenever it is possible, upon broad principles, and not give effect to such nice distinctions as are raised by the argument in support of this order. The position laid down by *Lawrence J.* in *Rex v. Roach* is, that if a child leaves his father's family under twenty-one, and returns while he is under age, he continues to be part of that family, and his settlement will shift with that of his father. But if the child, when he attains twenty-one, is absent from the father's family, the father thereby loses all control over him, he becomes emancipated, and his settlement will not shift with that of the father, but will continue to be in that parish where the father was settled when the child

attained twenty-one. *Lawrence J.* there says, "In the case of the soldier, the son was enlisted when he was under age, and if he had returned home before he was twenty-one, he would have been considered part of his father's family; or if he had quitted the army before twenty-one without returning home, the father might have reclaimed him by suing out a habeas corpus: but it appears from the case that he had attained the age of twenty-one before he left the army; therefore during the time that he continued a soldier, his father lost all control over him, he being of age; and the subsequent settlement gained by the father was not communicated to him." He then applies the reasoning in that case to the one before the Court, and afterwards says, "If, after such a service as this, the daughter had returned to her father before she was of age, she would have continued as part of her father's family; but not returning till after, she can no longer be considered as part of his family." The same point was decided in *Rex v. Cowhoneyborne*. There a widower having a daughter, placed her at eleven years of age with an uncle, by whom she was wholly maintained after that time, and with whom she continued to reside after she came of age, doing service for him, but without any contract of hiring to give her a settlement of her own, the father in the mean time having gone out to service. It was held, that on her coming of age she was emancipated. There, at the time when she attained twenty-one, she continued absent from her father's family. In *Rex v. Hardwick* the same doctrine was laid down. The only distinction between that and the former cases was, that the original separation of the pauper from his father's family was not voluntary. While he was under age he was drawn for the militia, and served in it until he was twenty-three years of age. The principle deducible from that case, however, is, that he was not part of his father's family while he continued subject to a control paramount to that of his father; and having while under age contracted a relation inconsistent with the parental control, which relation continued until after he attained twenty-one, the authority of the father thereby wholly ceased, and he could no longer insist on child's returning to his family. The latter was, therefore, emancipated. Now here at the time when the pauper attained twenty-one the settlement of his father was in *Limehouse*. He was then in service, where he voluntarily continued after twenty-one; he then became emancipated, and his settlement continued in that place. The order of sessions must, therefore, be quashed.—Order of sessions quashed.

72. *Rex v. Much Cowarne*, *M. T. 2 W. 4.*—2 *B. & Ad.* 861.—Upon an appeal against an order of two justices, whereby *John Yarnold* was removed from the parish of *Great Witley*, in the county of *Worcester*, to the parish of *Much Cowarne*, in the county of *Hereford*, the sessions confirmed the order, subject to the opinion of this Court on the following case:—The father and mother of the pauper were married in the year 1792, and the pauper was born in 1793, and is and always has been an idiot. The pauper and his father and mother resided together in the parish of *Great Witley*, the then legal settlement of the father, till 1822, when the mother died. In 1824 the father left the pauper (being then about thirty-one years old) in the parish of *Great Witley*, and hired himself out as a servant in husbandry to different masters during that year, and also

An idiot, though separated from his parent after the age of twenty-one, cannot be emancipated.

during the year 1825, and until he married a second wife in 1826 : he then went to *Much Cowarne*, the appellant parish, and resided there upon some property belonging to his second wife until her death in 1830, and there gained a settlement. After the father left *Great Witley* he never returned to it ; but the officers of that parish took care of the pauper, and never applied to the father for any assistance or remuneration for what they paid. The court of quarter sessions found that the pauper was incapable of taking care of himself, through imbecility of mind, at the time of the separation from his father, seven years since, and that previously to that time he was not emancipated, from the same cause. The question for the consideration of this Court was, whether under the above circumstances, the pauper's settlement was in the parish of *Much Cowarne* or not.—Lord TENNERDEN C. J. The order of sessions must be confirmed. A child unemancipated follows the settlement of his father ; and the general rule is, that until he reaches twenty-one, the child is not emancipated, unless he becomes the head of another family, or does some act to gain a settlement ; but if, after twenty-one, he separates himself from his father's family, he is emancipated. Why is twenty-one the period thus fixed by the law ? Because at that age the party is presumed in law to be competent to take the management of his own affairs. Here the pauper never was and never will be competent to do so. The reason, therefore, for which that period is fixed upon in other cases, wholly fails in this.—PARKE J. If the pauper were a minor, he would have continued unemancipated. Now it was found he was incapable of maintaining and taking care of himself, through imbecility of mind ; he must therefore be considered in the same situation as if he had remained a minor.—TAUNTON, J. The rule has been correctly stated to be, that where a party after twenty-one, separates from his father's family, and can provide for himself, and requires not farther protection, he is emancipated. That rule does not apply here.—PATTISON J. The words in *Rex v. Hardwick*, that "where the new settlement is acquired by the parent after the child "has attained twenty-one, it will not be communicated, unless, in "fact, the child continues part of the family," must apply only to a member of the family capable of supporting himself.—Order of sessions confirmed.

SETTLEMENT BY MARRIAGE.

Of the Marriage and Evidence to prove it.—2 Bott, pl. 101.

On a question of settlement, the pauper having been removed to her maiden settlement, respondents called A. to prove her marriage with B., in order to get rid of the subject of a sub-

73. *Rex v. All Saints, Worcester*, E. T. 57 G. 3—6 M. & S. 194. —Upon appeal the sessions confirmed an order for the removal of *Esther Newman*, otherwise *Esther Willis*, from the parish of *Cheltenham*, in the county of *Gloucester*, to the parish of *All Saints*, in the city of *Worcester*, subject to the opinion of this Court on the following case :—The appellants having produced the pauper, the counsel for the respondents began their case by calling a witness, named *Ann Willis*, for the purpose of proving that she had been married in *Ireland* to one *George Willis*. The counsel for the appellants objected to the competency of this witness, declaring themselves prepared with evidence of the subsequent marriage of the same George

Willis to *Esther* the pauper; but the Court determined to admit the witness. She proved her own marriage to *George Willis* about fourteen years ago, and that a paper which she stated to be a certificate of that marriage had been given her by the minister, and by her to a *Mr. Farren*, the overseer of the parish where she then resided, and *Farren* was in court ready to prove his having received the said certificate of the said witness, and having lost it, and he was ready also to have given parol testimony of its contents. Another witness proved that *George Willis* and the first witness cohabited together as man and wife, and had three children then alive: that the settlement of the said *George Willis* was in the parish of *Sandhurst*, where he was born: that he had been lately apprehended as a vagrant for leaving the said *Ann*, his wife, chargeable to that parish, and convicted of that offence at the quarter sessions for this county: that *Esther*, the pauper, had gained a settlement in the appellant's parish in her own right, as a single woman, about three years ago, but had since, on the 28th December 1815, married the said *George Willis*; which fact was proved, as well by the said pauper as by another witness, who was present at their marriage. The counsel for the appellants submitted to the Court that the evidence of *Ann Willis* should be struck out, which the Court refused.—Lord ELLENBOROUGH C. J. With the best attention I have been able to give to this case, I cannot discover any incompetence of the first wife to give evidence touching the fact of her marriage. At the period of the proceeding, when she was called, she contradicted no denial then in evidence of the existence of the marriage, nor do I say that it would make any material difference if she had. At the time when she proved the fact of marriage it did not appear that guilt would thereby be imputable to her husband. She did not refuse to be examined; and she proved the fact of the celebration of a marriage fourteen years before with a person under whom the pauper's title to a settlement was to be derived. She affirmed that he was her husband. How does this criminate him? Does it contradict any thing which he had sworn to before, so as to involve him in the crime of perjury? Not at all. Does it even relate to a matter on which he had given previous evidence? By no means. Then the question is, whether this is not a competent witness to prove her marriage in the first instance. Her being the wife presents no objection to her proving the marriage. The objection rests only on the language of the *King v. Cliviger*, that it may tend to criminate him, for it has not an immediate tendency, inasmuch as what she stated could not be used in evidence against him. The passage from Lord *Hale* has been pressed upon us, where it is said the wife is not bound to give evidence against another in the case of theft, if her husband be concerned, though her evidence be material against another, and not directly against her husband. Admitting the authority of that passage, it assumes that the husband was under the criminal charge, that he was included in the *simul cum aliis*. But if we were to determine without regard to the form of proceeding, whether the husband was implicated in it or not, that the wife is an incompetent witness as to every fact which may possibly have a tendency to criminate her husband, or which, connected with other facts, may perhaps go to form a link in a complicated chain of evidence against him, such a decision, as I think, would go beyond all bounds: and there is not any authority to sustain it, unless, indeed, what has been laid down, as

sequent marriage of *C.* with the pauper: Held, that *A.* was a competent witness, for *C.* not having been called as a witness, she did not contradict him, and her evidence could not be used to criminate him.

it seems to me, somewhat too largely, in *Rex v. Cliviger*, may be supposed to do so. I would observe that by the present decision the Court does not mean to break in on the rule, founded in the policy of the law, that husband and wife shall not be permitted to be witnesses for or against or to criminate each other; but before I pronounce that it is a good objection to the competency of either to be a witness, that his or her testimony may produce some latent possible effect, which in its result may occasion an inconvenience to the other, I shall require some graver authority or reason than I am acquainted with at present. It may be remarked here that at the stage of the enquiry when this witness was examined it was not in proof that the second marriage had taken place; undoubtedly, therefore, she was an unexceptionable witness at that time. To strike out her evidence because, by reason of what was afterwards proved, of the possible inconvenience which might result to her husband from the disclosure, would, in my opinion, be introducing a dangerous laxity in dealing with evidence. It would reduce all prior evidence in a cause to a precariousness dependent upon that which follows, whether it should remain part of the evidence on the notes or not. It seems to me, therefore, that the evidence was well received at the time when it was produced, and that the subsequent testimony did not render the witness incompetent, so as to strike out her evidence *ab initio*.—BAYLEY J. On the best consideration which I can give to this case, it appears to me that *Ann Willis* was a competent witness, and I found this opinion not upon the order of time in which she was called, for in my judgment she would have been equally competent after the second wife had given her testimony. It does not appear that she objected to be examined, or demurred to any question. If she had thrown herself on the protection of the Court on the ground that her answer to the question put to her might criminate her husband, in that case I am not prepared to say that the Court would have compelled her to answer; on the contrary, I think she would have been entitled to the protection of the Court. But as she did not object, I think there was no objection arising out of the policy of the law, because by possibility her evidence might be the means of furnishing information, and might lead to enquiry, and perhaps to the obtaining of evidence against her husband. It is no objection to the information that it has been furnished by the wife. In *Rex v. Cliviger*, the decision seem to have been put upon two grounds; one, that the husband having been examined before, the wife was called to contradict his evidence, and thus to prove him guilty of perjury. The other ground was this; that her evidence would have a tendency to charge him with bigamy, or might lead to a charge for that crime, and cause the husband to be apprehended. I am not sure that the import of the expression "tendency to criminate" was very accurately defined in that case. It was probably not understood as meaning that the wife's evidence could be used against her husband, for we know that this could not be so. It has, indeed, been argued that the wife's evidence in this case might operate as a direct charge against her husband, by analogy to what has been said may be practised in a civil action, where if the issue be upon a felony, and the felony proved, the party against whom it has been proved may be apprehended upon that evidence; but supposing that to be so, the present is not an analogous case; and nothing which

the wife proved on this occasion could be the direct means of founding a prosecution against her husband, although it might afford the means of procuring evidence against him. But such a collateral consequence is not a sufficient objection. With respect to the case of *Broughton v. Harpur*, the ground on which the Chief Justice rejected the witness does not appear very clearly upon the report: the objection to her testimony seems to have been put on the ground of interest. At the period when that was so ruled by the Chief Justice the authorities were contradictory as to the nature or degree of interest which rendered a witness incompetent, whether it need amount to an interest in the event of the suit; but in later times this rule has been better established, the courts inclining to let the objection on the score of interest go rather to the credit than the competency. Therefore on the ground that the admission of this witness does not interfere with the policy of the law as it concerns marriage, I think she was competent.—ABBOTT. J. I also am of opinion that this witness's testimony was well received, and ought not to have been struck out. The question does not arise here as to the admissibility of husband or wife to contradict the testimony which has been previously given by the other, and I, therefore, abstain from saying any thing upon that point. Complaint, indeed, has been made in the progress of the argument of the course of proceeding pursued at the sessions by the respondents in marshalling the evidence, in order to steer clear of *Rex v. Cliviger*, but it is plain that the appellants did not propose to call the husband, and, therefore, could sustain no prejudice on that account. But the opinion which I have now formed would have been the same if a different course had been followed; for instance, suppose the respondents had begun by proving the pauper's maiden settlement, and the appellants had answered that by proving her marriage with *Willis*, and then the respondents had called the first wife to prove the former marriage. I should have been of opinion that she was competent to make such proof; so that the order of proceeding, in my judgment, made no difference. Her evidence upon this occasion can never be received against her husband, nor can the decision of the sessions be used against him. They can found neither a charge nor the evidence of any charge against him. So that it may properly be said of her evidence that it has not any tendency to criminate him, provided that expression be understood with the limitation which I affix to it, that is, to criminate him in the course of some proceeding in which a crime is imputed to him. With this qualification I give my assent to the expression; but if it is to be carried farther, with all my respect for the learned Judges who decided *Rex v. Cliviger*, I cannot but say that I know not what limitation is to be given it.—Order of sessions confirmed.

74. *Rex v. Birmingham*, *E. T.* 9 G. 4.—8 B. & C. 29.—Upon an appeal against the order of two justices for the city and county of the city of *Coventry*, whereby *Luke Smith* and *Elizabeth Smith* his wife were removed from the united parishes of *Saint Michael* and the *Holy Trinity*, in the city and county of the city of *Coventry*, to the parish of *Birmingham*, in the county of *Warwick*; the court of quarter sessions confirmed the order, subject as to so much of the order as respects the settlement of *Elizabeth Smith*, therein described as the wife of *Luke Smith*, to the following case:—The pauper, *Luke Smith*, was married to *Elizabeth Smith*, then *Elizabeth Bratt*, in

Where a marriage was solemnized by license between a man and woman, the former being a minor, whose father was living, and who did not consent to the marriage

Held, that it was nevertheless valid, the 4 G. 4. c. 75. s. 16., which requires such consent, being directory only.

Where the marriage of a female pauper is brought about by the fraud of parish officers, that does not prevent her from acquiring a settlement by the marriage in the husband's parish.

the year 1826, by license, he then being a minor under the age of twenty-one years, and having his father then living, who did not consent to his said marriage. It was objected by the appellants that his marriage was void under the new marriage-act, stat. 4 G. 4. c. 76., for want of the father's consent: the objection was overruled by the court. The appellants then offered evidence to prove that at the time of said marriage *Elizabeth Smith*, then *Elizabeth Bratt*, was settled in and chargeable to the parish of *Little Packington*, and that the marriage was effected and brought about by a fraudulent contrivance and conspiracy of the overseers of the parish of *Little Packington*, for the purpose of changing the settlement of *Elizabeth Smith*, then *Elizabeth Bratt*, from the parish of *Little Packington* to the parish of *Birmingham*, in which *Luke Smith* was then settled. The court of quarter sessions refused to admit the evidence, and confirmed the order of removal, subject to the opinion of the Court of King's Bench, first, upon the validity of this marriage within the provisions of the statute 4 G. 4. c. 76.; secondly, upon the propriety of the rejection of the above-mentioned evidence.—Lord TENTERDEN C. J. We have considered the various statutes referred to by counsel, and are all of opinion that the marriage in question is valid. A marriage under such circumstances would by the 26 G. 2. c. 33. s. 11. have been void, but the 3 G. 4. c. 75. s. 1. recites that section, and that it had been productive of great evils and injustice, and then proceeds to enact, “that so much of the said statute as is hereinbefore recited, as far as the same relates to any marriage to be hereafter solemnized, shall be and the same is hereby repealed.” The second section enacted, that marriages theretofore solemnized by license, without such consent as required by the former act, should be valid, with certain limitations imposed by the third and four following sections. Then the eighth and subsequent sections contained new provisions as to granting licenses in future. These were repealed by the 4 G. 4. c. 17., which restored certain parts of the 26 G. 2. c. 33., and some question might be raised as to whether that part of the 3 G. 4. c. 76. remained in force which repealed the 11th section of the 26 G. 2. But that question is now rendered immaterial by the 4 G. 4. c. 75., which repealed the 4 G. 4. c. 17., and so much of the 26 G. 2. c. 33. as was then in force. The only statute, therefore, now to be considered is the 4 G. 4. c. 75., the fourteenth section of which points out the mode in which licenses are to be obtained, and the matters to be sworn to by the parties or one of them; and one of those matters, where either of the parties, not being a widower or widow, shall be under the age of twenty-one years, is, that the consent of the person or persons whose consent to such marriage is required, under the provisions of this act, has been obtained thereto. Then the sixteenth section specifies the persons who shall have power to consent, and proceeds, “and such consent is hereby required for the marriage of such party so under age, unless there shall be no person authorized to give such consent.” The language of this section is merely to *require* consent, it does not proceed to make the marriage void, if solemnized without consent. Then the twenty-second section declares, that certain marriages shall be null and void, and a marriage by license without consent is not specified. Thus far, therefore, the question depends upon the direction in the sixteenth section; and if there were any doubt upon the construction

of that action, it would be removed by the twenty-third, which enacts, that "if any valid marriage solemnized by liscense shall be procured by a party to such marriage to be solemnized between persons, one or both of whom shall be under age, by means of falsely swearing to any matter to which such party is required personally to depose," not that the marriage shall be void, but that all the property accruing from the marriage shall be forfeited, and shall be secured for the benefit of the innocent party, or the issue of the marriage. This is a penalty for disobeying the direction of the legislature given in the sixteenth section, and is calculated to prevent fraudulent and clandestine marriages, by depriving the guilty of the pecuniary benefit, which is most commonly the inducement moving to the fraud. For these reasons it appears to us that the marriage in this case is valid, and the order of sessions right.—Order of sessions confirmed.

75. *Rex v. Tibshelf*, T. T. 11 G. 4. & 1 W. 4.—1 B. & Ad. 190.—On appeal against an order of two justices, whereby *Mary Betts*, the wife of *Joseph Betts*, (commonly called *Wilson*.) living apart from her husband, and her six children, were removed from the parish of *Mansfield* in the county of *Nottingham*, to the parish or township of *Tibshelf*, in the county of *Derby*; the sessions confirmed the order, subject to the opinion of this Court on the following case:—The pauper and her husband (he having gained a settlement in the appellant parish by the apprenticeship hereinafter referred to) were married in the year 1817 by banns, he by the name of *Joseph Betts*, and she by the name of *Mary White*. The husband had been baptized as the son of *John* and *Mary Betts*. *Mary Betts* was the daughter of *Samuel Wilson*, and her husband having absconded shortly after marriage, her son, the pauper's husband, was brought up by his maternal grandfather, and was always called by the name of *Wilson*, was bound apprentice by that name, with the consent of his grandfather, and was never called or known by the name of *Betts*, or by any other name than *Wilson*, either before or after his marriage with the pauper. The pauper *Mary* was the legitimate daughter of *Job* and *Martha Hodgkinson*, and was never called or known by any name except *Hodgkinson* till after her marriage; but in the register of her baptism she is described as "*Mary* the daughter of *Samuel White* and his wife." It appeared that her mother was the daughter of *Samuel* and *Dorothy White*, and that her father and mother resided with them at the time of her birth, and her mother's brother (who was called as a witness for the respondents) stated that he believed the entry in the register to have been a mistake of the clergyman who baptized her; and that he was the person who discovered the mistake in the register previous to the pauper's marriage, it having been supposed that her baptism was omitted to be registered.—Lord TENTERDEN C. J. This cause arose out of an order for the removal of *Mary*, the supposed wife of *Joseph Betts*, and her six children to *Tibshelf*, the settlement of the said *Joseph Betts*; and the question, whether that removal was right or not, depended upon the validity of the marriage between *Joseph Betts* and the said *Mary*. If the marriage was invalid, the order of sessions was wrong, and we are of opinion it was invalid. This marriage was in 1817, and at that time the only act by which marriages were regulated, was the 26 G. 2. c. 33. which was finally repealed, except as to all acts, matters, and things done under its provisions, by 4 G. 4. c. 76. Neither that act, nor the repealed act

In the publication of banns, in 1817, a woman named *Mary Hodgkinson* was called *White*, a surname entered by mistake in the register of her baptism, but which she had never gone by or been entitled to. The false name was given to the officiating clergyman without any intention to mislead, nor did any individual having an interest in the marriage appear to have been deceived: Held, that the marriage was void. It might have been otherwise if (without any fraudulent intent) there had been only a partial variation of the name, or the addition or suppression of one christian name, or the name had been one, which the party had ever used or been known by.

3 G. 4. c. 75., contains any clause rendering former marriages by improper banns valid; and if section 19. of the latter act could have been construed as having that effect, it could not have any operation after the repeal of that act. The act 26 G. 2. provides by section 8., that all marriages that shall be solemnized without publication of banns, or licence, shall be null and void to all intents and purposes whatsoever. In the directions in that statute for the publication of banns, nothing is said as to the names of the parties, but section 2. excuses the minister from publishing them, unless the parties deliver in, in writing, their true christian and surnames. And in a series of decisions upon this statute, both in the ecclesiastical courts and the Court of King's Bench, it has been held, that the clear intention of the legislature was, that the banns are to be published in the true names of the parties, otherwise it is no publication at all. By these decisions these rules are fully established: first, that if there be a total variation of a name or names, that is, if the banns are published in a name or names totally different from those which the parties, or one of them, ever used, or by which they were ever known, the marriage in pursuance of that publication is invalid; and it is immaterial in such cases, whether the misdescription has arisen from accident or design, or whether such design be fraudulent or not. But, secondly, if there be a partial variation of name only, as the alteration of a letter or letters, or the addition or suppression of one Christian name, or the names have been such as the parties have used, and been known by, at one time and not at another; in such cases the publication may or may not be void: the supposed misdescription may be explained, and it becomes a most important part of the enquiry, whether it was consistent with honesty of purpose, or arose from a fraudulent intention. It is in this class of cases only, that it is material to enquire into the motives of the parties. The substance of these rules will be found in the judgments of Lord Stowell, in the cases of *Sullivan v. Sullivan* (a), *Frankland v. Nicholson* (b), *Pougett v. Tomkins* (c), and *Mather v. Ney* (d), and in the judgments in *Rex v. Billingshurst* (e) in this Court. The present case falls distinctly within the first rule. Whether the alleged husband was sufficiently designated by the name of *Betts* we need not enquire, as we are clearly of opinion that the woman was never known by, and never used the surname of "*White*," so as to make that, in any latitude of construction, "a true name" within the meaning of the statute. Her family name, and that by which she was always known, was *Hodgkinson*. The only occasion upon which the name of *White* was applied to her was in the register of her baptism; she was not baptized by that name, for the surname is never used in the baptismal ceremony; but the name was entered in the register necessarily without her privity, and it seems without that of her parents, and probably by a mere error of the officiating minister, who appears to have mistaken her parentage, and considered her as the child of her maternal grandfather and grandmother. It is impossible, whatever may be the disposition to favour parties who have meant to act correctly, and from the best motives, to say that a surname so entered can be the true name of the party to whom it is applied. It is doubtless a great hardship

(a) 2 Hagg. Consist. Rep. 254.

(b) 3 M. & S. 261.

(c) 1 Phill. Rep. 147.

(d) 3 M. & S. 263.

(e) 3 M. & S. 265.

(f) 3 M. & S. 266.

upon these innocent persons to pronounce that this marriage is void, but it would be a much greater inconvenience to the public to alter the settled rules upon this subject, for the sake of preventing a particular mischief.—Order of sessions quashed.

76. *Rex v. St. John Delpike*, *E. T.* 1 *W.* 4.—2 *B. & Ad.* 226.—Upon an appeal against an order of two justices, whereby *Mary Laycock* was removed from *St. Mary Castlegate*, in the city of *York*, to the parish of *St. John Delpike*, in the same city, the court of quarter sessions confirmed the order, subject to the opinion of this Court on the following case:—In the year 1808, the pauper not then being a widow, and being under the age of twenty-one years, intermarried with one *James Laycock*. This marriage was solemnized by licence in the parish church of *St. Lawrence*, in the city of *York*, without the consent of the pauper's father, who was then living. She continued to live with *James Laycock* as his wife till 1825, when she intermarried with one *Thomas Laycock*, the said *James Laycock* then and still being alive. The question for the opinion of the Court was, whether the former marriage with *James Laycock* was or was not valid: if it were declared valid, then the order of sessions was to be quashed; if invalid, then to be affirmed.—Lord TENTERDEN C. J. We must construe the proviso in the third section as intended to apply to cases which occurred before the passing of the 3 *G.* 4. c. 75. Section 2. applies to marriages which, under certain circumstances, were rendered invalid by the 26 *G.* 2. c. 33., and which are by that section rendered valid in cases where the parties shall have continued to live together as husband and wife till the death of one of them, or till the passing of that act. The provision in section 3., that “the act shall not extend to render valid any “marriage where either of the parties shall at any time afterwards “during the life of the other party, have lawfully intermarried with “any other person,” may have been wholly unnecessary. At the same time it may possibly have occurred to those who framed the act that it might occasionally happen, that one of the two parties to the first marriage might, during the life of the other, have lawfully intermarried with a third, and might afterwards have cohabited again with the original husband or wife, till the death of one, or the passing of the act. I think, however, that clause was introduced only for greater caution, and that we ought not to construe the act so that a marriage may first be treated as valid, and afterwards as invalid. The first marriage, therefore, was valid: and consequently the order of sessions must be quashed. LITLEDAL J. The second section renders valid marriages which, by the 22 *G.* 2. c. 33., would be void. I think the words of that and the following section are, in their natural construction, retrospective. And without express words to a contrary effect, we could not say that the validity given by this act to marriages was intended to be shifting and uncertain. The proviso in the third section, that “the act shall not “extend to render valid any marriage declared invalid by any court “of competent jurisdiction before the passing of that act, nor any “marriage where either of the parties shall at any time afterwards “during the life of the other party, have lawfully intermarried with “any other person,” seems to contemplate cases not very likely to happen in conjunction with the circumstances pointed out in the second section. But such cases are possible. Parties might con-

The statute 3 *G.* 4. c. 75. s. 2. enacts, that in all cases of marriage had by licence, before the passing of that act, without such consent as is required by 26 *G.* 2. c. 33. s. 11., and where the parties shall have continued to live together as husband and wife, till the death of one of them or till the passing of that act (3 *G.* 4. c. 75), such marriage, if not otherwise invalid, shall be deemed valid to all intents and purposes.

Sect. 3. provides “That nothing in that act contained shall extend to render valid any marriage declared invalid by any court of competent jurisdiction before the passing of that act, nor any marriage where either of the parties shall at any time afterwards, during the life of the other party, have lawfully intermarried with any other person.”

Held, that a marriage which would have been void by the 26 *G.* 2. c. 33. and had ~~not~~ been

valid by the second section of the 3 G. 4. c. 75. could not, subsequently, be rendered invalid by the marriage of either of the of the parties, during the life of the other, with a third person.

tinue to cohabit, yet friends might choose to render the marriage invalid. So the parties to the original marriage might cohabit together, though one had been lawfully married in the mean time to another. But if there could be a floating, shifting validity, the consequence might be, that children might be legitimate one day and not another; and it appears to me that this is not contemplated by the act.—**PARKE J.** I think this is a very clear case. The second section renders valid marriages otherwise invalid by the 26 G. 2. c. 33., in cases where the parties shall have continued to live together as husband and wife till the death of one of them, or till the passing of that act. Under that section, therefore, the first marriage would be valid; because here the parties did continue to live together till the passing of the act. Then the third section enacts, that the act shall not render valid any marriage where one of the parties shall, during the other's life, have lawfully intermarried with any other person. It is said that this clause is prospective. If it be retrospective only, there can be no question in the case. If it be prospective, this absurdity will follow, — that parties, whose marriage is rendered valid by the second section, may at any time they please bastardize their issue, by contracting a subsequent marriage. Such a construction ought not to be given to the words of the act, unless it be absolutely necessary. But then it is said that if the construction be retrospective only, this clause is useless. That would not be a sufficient reason for so absurd a construction as that contended for by the respondent parish: but, in truth, the clause is not altogether useless; for two parties may be living together, and yet one have married another person; and this case is provided for by the last part of the third section. The argument assumes that a party cannot commit bigamy, without ceasing to live with his first wife. A man may have continued to cohabit with his first wife till the passing of the act, or the death of one of the parties, and yet have contracted another, and a valid marriage in the mean time.—**PATTERSON J.** I think the original marriage was rendered valid by the second section, and that the third section has a retrospective operation only; and therefore, that the marriage of the pauper to *Thomas Laycock* after the passing of the act does not take the case out of the second section.—Order of sessions quashed.

Upon a question as to the settlement of *Elizabeth*, the wife of *C.*, the respondents proved by the testimony of *C.* his marriage with the pauper in 1829. The appellants in order to prove that that marriage was void, on the ground that he had been married in 1826 to *M. B.* called the latter, who stated that she in 1826 went with *C.* before a reputed clergyman of the established church, in *Ireland*, who in his private house there read to them the marriage ceremony. A document was also produced, purporting to be *W.*'s letter of orders signed in 1799 by the then Archbishop of *Tuam*, which was proved to have been among *W.*'s papers at the time of his death in *July* 1829:

Held, first, that *M. B.* was a competent witness to prove the first marriage, although her husband had been before examined, and proved the second marriage.

Secondly, That the certificate of the ordination of *W.* was properly received in evidence, having come from the proper custody, and being more than thirty years old; and that, the certificate not being the act of any court, and not having any relation to the corporate character of the Archbishop, the seal was to be considered the seal of the natural person, and not of the corporation. Had it been of the latter character,

Quere, whether it would have been admissible without evidence that it was the proper seal?

opinion of this Court on the following case:—The respondents proved by the testimony of the said *William Joliffe Cook*, his settlement in *St. Pancras*, and his marriage with the pauper at *Bath* in 1829, and he stated her to be now his wife. The appellants insisted that the marriage was void, the said *Wm. Joliffe Cook* having been previously married in *Dublin* in 1826, to *Mary Byrne*; and, to prove their case, they called the said *Mary*, to whose competency the respondents objected. The Court having admitted her evidence, she proved that she, being a Roman Catholic, and *Cook*, being a protestant, went on the 21st of *May* 1826 before *Mr. Wood*, a clergyman residing in *Dublin*, who, in his private house, read to them the marriage ceremony, and in the course of it asked her whether she would be the wife of *Cook*, and asked him whether he would be her husband, to which question both of them answered, I will; and after the ceremony they returned to the house of *Cook's* father, whose servant she was, and there secretly cohabited for two months and upwards. It was proved by parol that *Wood* was reputed to be a clergyman of the established church, and the appellants put in a document purporting to be the letters of orders signed and sealed by *William*, late Lord Archbishop of *Tuam*, dated the 18th of *October* 1799, whereby the archbishop certified that he had ordained *Wood* a priest, and which letters were proved to have been among *Wood's* papers at the time of his death, in *July* 1829. The respondents objected to the admissibility of these letters; but they were admitted by the Court without proof of the handwriting or seal of the archbishop, as being more than thirty years old.—Lord TENTERDEN C. J. First, we are of opinion that the witness *Mary*, assuming her to be the first and lawful wife of *W. T. Cook*, was a competent witness. The question arose on the settlement of another woman, considered to be the wife of *Cook*. *Cook* was examined, and proved his marriage with this woman; but he was not asked, and did not say, that he had not been previously married to the witness *Mary*. The witness, *Mary*, was afterwards called to prove her previous marriage with this person. In deposing to this marriage, she did not contradict any thing that he had said. I notice this fact; but we do not mean to say that, if she had been called to contradict what he had sworn, she would not, in a case like this, have been a competent witness to do so. It is not necessary to decide that question at present; but it may well be doubted whether the competency of a witness can depend upon the marshalling of the evidence, or the particular stage of the cause at which the witness may be called. In the present case, however, the witness not having been called to contradict her husband, and her testimony not being inconsistent with the fact to which he had deposed, her incompetence, if it can be established, can be so only upon the authority of the case of *The King v. The Inhabitants of Cliviger* (a). The authority of that case was much shaken by the decision of the case in *The King v. The Inhabitants of All Saints, Worcester* (b), in which Lord Ellenborough said, “The objection rests only on the language of *The King v. Cliviger*, that it may tend to criminate him; for it has not an immediate tendency, inasmuch as what she stated could not be used in evidence against him. The passage from Lord Hale

(a) 2 T. R. 263.

(b) 6 M. & S. 194. 2 Batt. pl. 30A.

(P. C. 301.) has been pressed upon us, where it is said the wife is not bound to give evidence against another in a case of theft, if her husband be concerned, though her evidence be material against another, and not directly against her husband. Admitting the authority of that passage, it assumes that the husband was under the criminal charge; that he was included in the *simul cum aliis*. But if we were to determine, without regard to the form of proceeding, whether the husband was implicated in it or not, that the wife is an incompetent witness as to every fact which may possibly have a tendency to criminate her husband, or which, connected with other facts, may perhaps go to form a link in a complicated chain of evidence against him, such a decision, as I think, would go beyond all bounds; and there is not any authority to sustain it; unless, indeed, what has been laid down, as it seems to me, somewhat too largely, in *Rex v. Cliviger* may be supposed to do so." The decision in the case of *Rex v. The Inhabitants of Cliviger* appears to have been founded on a supposed legal maxim of policy, viz. that a wife cannot be a witness to give testimony in any degree to criminate her husband. This will undoubtedly be true in the case of a direct charge and proceeding against him for any offence; but in such a case she cannot be a witness to prove his innocence of the charge. The present case is not a direct charge or proceeding against the husband. It is true, that if the testimony given by both be considered as true, the husband, *Cook*, has been guilty of the crime of bigamy; but nothing that was said by the wife in this case, nor any decision of the court of session, founded upon her testimony, can hereafter be received in evidence to support an indictment against him for that crime. This is altogether *res inter alios acta*; neither the husband nor the wife has any interest in the decision of the question, and the interest of the parish of *Pancras* required that the illegality of the second marriage should be established, if it was in fact, illegal. Secondly, We are also of opinion that the certificate of the ordination of Mr. *Wood*, by whom the first marriage was celebrated in *Ireland*, was properly received in evidence. This certificate came from the proper custody. It was produced by the widow of *Wood*, and was found among his papers at his death. It was dated in 1799, more than thirty years before the time of its production in evidence; and if it had been signed only, there could have been no question as to its admissibility; but, in fact, it was also sealed: and it was contended that this must be considered as the seal of a court or of a corporation, and therefore not within the rule as to thirty years, but requiring to be proved. It is not necessary to decide whether such a seal be within the rule; it may be argued that it is not within the principle of the rule; because, although the witnesses to a private deed, or persons acquainted with a private seal, may be supposed to be dead, or not capable of being accounted for after such a lapse of time, yet the seals of courts and corporations, being of a permanent character, may be proved by persons at any distance of time from the date of the instrument to which they are affixed. We think it not necessary to decide this question, because a certificate of ordination is not the act of any court; and although an archbishop is a corporation sole for many purposes, such as those relating to the temporalities of his see, yet such a certificate has no relation to his corporate character, and the seal must

be considered as the seal of the natural person, and not of the corporation. The result of this is, that the decision of the sessions was right, and the rule must be discharged.—Order of sessions confirmed.

Of the Wife's Settlement in right of the Husband—2 Bott.
pl. 102.

78. *Rex v. Brington, M. T. 8 G. 4* — 7 B. & C. 546. — Upon appeal against an order of two justices, whereby they removed *Maria*, the wife of *Edward Chambers*, then a convict at *Van Diemen's Land*, and *Mary Elliott*, their daughter, from the parish of *Brington*, in the county of *Northampton*, to the parish of *Badby*, in the same county; the sessions quashed the order, subject to the opinion of this Court, as to whether, under the following circumstances, the pauper was removable:—*John Elliott*, in consideration of a marriage between himself and *Mary Thornton*, by indentures of lease and release and settlement of the 6th and 7th January 1772, granted and released a messuage in *Little Brington*, and about twenty acres of land, to trustees, to the use of himself till the marriage; remainder to himself for life; remainder to trustees to support contingent remainders; remainder to the use of the said *Mary Thornton* for life, in full of jointure; remainder to trustees, their executors, &c. for 500 years from the decease of the survivor of the said *John Elliott* and *Mary Thornton*, subject to the trusts therein-after declared; and after the expiration of the said 500 years, and subject thereto, remainder to the use of the first son of the body of the said *John Elliott* on the body of the said *Mary* lawfully to be begotten, and the heirs of such first son lawfully issuing: remainder to the use of the second, third, fourth, and all and every other the son and sons of the body of the said *J. Elliott* on the body of the said *Mary* lawfully begotten, successively, in seniority of age and priority of birth, and the heirs of his and their body and bodies lawfully issuing, the elder of such son and sons, and the heirs of his and their body or bodies, being to be preferred; remainder to the use of all and every the daughter and daughters of said *J. Elliott*, on the body of the said *Mary* lawfully to be begotten, and the heirs of the body and bodies of all and every such daughter and daughters, the said daughters, if more than one, to take as tenants in common; and for want of such issue, to the use of *J. Elliot*, his heirs and assigns for ever." The marriage took effect, and there was issue four sons and eight daughters, all of whom died without issue, in the lifetime of their mother, except four daughters, viz. *Elizabeth*, *Alice*, *Maria*, and *Sophia*, who survived her. *Maria*, the pauper, intermarried with and is now the wife of *Edward Chambers*, whose legal settlement is in the parish of *Badby*, where she was living until February 1826, (her husband being at that time, and continuing at the date of the order of removal, absent from *England*) when she went to *Brington* (the parish in which the property lies) to her sister's, who lives in the house mentioned in the marriage-settlement, and resided there thirteen weeks, until she was removed to *Badby*.—*BAYLEY J.* The sessions, by quashing the order of removal, both as to the mother and the daughter, have virtually decided that the child was within the age of nurture, and, therefore, not removable

A woman seized of a messuage, &c. in the parish of A., as tenant in common with her three sisters, married, and resided for some years with her husband in the parish of B., where he was legally settled. The husband was transported, and the wife, some time afterwards, went with her daughter to live in the messuage in A., in which one of her sisters resided: Held, that she was irremovable; and the sessions having quashed an order removing her and her daughter, it was presumed that the latter was within the age of nurture, and therefore irremovable.

from her mother. There is no ground for reversing the order of sessions in that respect. As to the principal point, the question is not as to the place where the wife is settled; that, without doubt, is in her husband's parish, *Badby*. This is a case in which the party goes to her own estate, of which she has a seisin. The husband had no sole seisin, for when an estate in fee comes to a feme covert, the interest of the husband and wife is a seisin in fee in both in right of the wife, *Polyblank v. Hawkins* (a). *Rex v. Aythorpe Booding* (b) is not so strong a case as the present: there the property was the husband's, while here it is the property of the wife, descendible to her heirs. There is no distinction between a sole occupation and an occupation in coparcenary. Although no partition had been made, the wife had a right to say that she would occupy her part, and not suffer other persons to occupy it. And there might be a good reason for it here, as by the husband's absence abroad it might have been difficult for her to collect the profits without residence. The pauper, therefore, was irremovable, though she could not have gained any settlement by her residence in *Brington*.—*HOLROYD* and *LITTLEDALE* Js. concurred.—Order of sessions confirmed.

Of the Wife's Settlement in her own right.—2 Bott, pl. 109.

The wife of an Irishman, who has no settlement in England, may, if deserted by him, be removed to her maiden settlement.

79. *Rex v. Cottingham*, M. T. 8. G. 4.—7 B. & C. 615.—Upon an appeal against an order of two justices, whereby *Anne*, the wife of *Patrick O'Hara*, and her four children, were removed from the parish of the *Holy Trinity*, in the town and county of *Kingston-upon-Hull*, to the parish of *Cottingham*, in the East Riding of the county of *York*, the sessions confirmed the order, subject to the opinion of this Court on the following case:—*Anne O'Hara's* maiden settlement was in *Cottingham*, and she had acquired no subsequent settlement. It was admitted that the settlement of her eldest child *Henry*, who was born a bastard, was also in that parish. *Patrick O'Hara*, native of *Ireland*, was married to the said *Anne* on the 28th of April 1819, and the three youngest children were the issue of such marriage: he had no settlement in *England*. Some time in the year 1819, after the marriage, and whilst *Patrick O'Hara* and his wife resided at *Hull*, *Anne* and her eldest son became chargeable to *Hull*, and were thereupon (with the consent of the husband) removed to *Cottingham*, the place of her maiden settlement, and the order of removal upon that occasion stated her to be the wife of *Patrick O'Hara*, an Irishman, who had no settlement in *England*, and the said *P. O'Hara* had consented to her removal. This order was not appealed against, and the appellant parish granted relief to *Anne* and her said child for a short time. In the early part of 1827 *P. O'Hara* having left *Hull*, and it not being known what had become of him, the wife and family again became chargeable to the parish of the *Holy Trinity*, who, as above stated, removed them to *Cottingham*. The sessions thought that they might be removed to the place of the wife's maiden settlement, and confirmed the order subject to the opinion of this Court.—*BAYLEY* J. This is a very plain case. Before the statute 59 G. c. 12. passed, it was clearly established by a series of authorities from the case of *St. John's, Wapping*, v. *St. Botolph's, Bishopsgate* (c),

(a) *Doug.* 329. (b) *Burr.* S. C. 412. 2 Bott. pl. 104. (c) *Burr.* S. C. 361.

to *Rex v. Harborton*, (a), that where a woman, who had a settlement, married, and was deserted by her husband, who had no settlement, the maiden settlement of the wife was thereby revived, and she might be removed thither. Here the husband at the time when the order of removal was made had deserted his wife, and she did not know where he was. According to the authorities she was clearly removeable to *Cottingham*, unless the law in this respect has been altered by the 59 G. 3. c. 12. s. 33. The mischief recited in the thirty-third section of that statute is, that poor persons born in *Scotland* or *Ireland* frequently become chargeable to parishes in *England*, and cannot be removed unless they have committed some act of vagrancy, and have been adjudged to be rogues and vagabonds, and it then authorizes and requires two magistrates, upon the complaint of the parish officers, that any person born in *Scotland* or *Ireland* has become chargeable to such parish by himself or his family, to cause such person to be brought before them, and to examine him touching the place of his birth or last legal settlement, and if it shall be found that the person so brought before them was born in *Scotland* or *Ireland*, &c., and has not gained any settlement in *England*, then the justices are empowered, by a pass under their hands and seals, to cause such person and his wife, &c. to be removed to the place of his birth in the manner therein mentioned. The object of the legislature, therefore, was to relieve parishes from the necessity of maintaining as casual poor persons born in *Scotland* or *Ireland*; and with that view it authorizes their removal to the place of their birth, together with their wives, &c. The statute does not authorize the removal of the wife alone to the place of the birth of the husband, and the husband having quitted the parish, could not be removed to *Ireland*, and that being so, the wife could not be removed without him. This is a case, therefore, not within the act of parliament, and the law applicable to this case remains as it was before the passing of the act. In *Rex v. Heaton Norris*, (*Easter Term*, 1821,) the same construction was put upon this statute. In that case, a *Chelsea* pensioner, born in *Scotland*, left his wife and family at *Heaton Norris*, whilst he came to do town-duty, and in his absence the wife and family were removed to the wife's maiden settlement. On appeal the sessions stated a case, in which the only question they put was, whether under the 59 G. 3. c. 12. s. 33., the removal ought to have been to *Scotland*. The judges thought not. In *Rex v. Leeds*, it was only decided, that where the husband (who was born in *Scotland*) and his wife were living together, the wife must be sent along with him to *Scotland*. The law applicable to this case remains the same as it was before the 59 G. 3. c. 12., it follows, therefore, that the wife and children were clearly removeable to the place of her maiden settlement. No mischief will result from this decision, for during the absence of the husband the family will be maintained by the parish, which is bound to maintain them, and upon his return that parish may pass him and his family to *Ireland*. The order of sessions must, therefore, be confirmed.—Order of sessions confirmed.

(a) 2 Bott. pl. 1038.

Of the Removal of the Wife.—2 Bott, pl. 123.

The wife of an Irishman who has no settlement in England,

80. *Rex v. Collingham*, M. T. 8 G. 4.—B. & C. 615.—Ante, pl. 79.

may if deserted by him be removed to her maiden settlement.

SETTLEMENT BY RENTING A TENEMENT.

Of the kind of Tenement.—2 Bott, pl. 162.

The value of a tenement, in respect of acquiring a settlement, is to be taken as of the time when the party comes to settle on it; hence where a man took a piece of land for ninety-nine years at the rent of two guineas a year, on which he built two houses, each of the yearly value of five guineas, in one of which he lived, and let the other at five guineas a year: Held, that he did not thereby gain a settlement.

81. *Rex v. Aston*, H. T. 57 G. 3.—6 M. & S. 54.—On appeal against an order for the removal of Sarah Jesson, widow, from the parish of Aston, near Birmingham, in the county of Warwick, to the parish of Hales Owen, in the county of Salop; the sessions quashed the order, subject to the opinion of this Court upon the following case:—The pauper was the widow of Thomas Jesson the younger, deceased, who was the son of Thomas Jesson the elder. In 1800 Jesson the elder took a piece of land in Hales Owen for ninety-nine years, at the rent of 2*l.* 2*s.* a year, and built on it two houses, each of the yearly value of 5*l.* 5*s.*, in one of which he lived, and let the other at 5*l.* 5*s.* a year. When the first was finished he went to live in it himself, and before he had built the other he let it at 5*l.* 5*s.* a year, and the tenant, immediately after it was completed, entered upon it, and it was constantly let to the time of the appeal. During this time Jesson the younger, being an infant, and not having gained a settlement in his own right, lived with his father as part of his family for several years, and never gained a settlement in his own right.—Lord ELLENBOROUGH C. J. I think, upon looking at the language of the statute, that we are bound, in considering the value of a tenement, to regard that as its value which it bore at the time when the party took it, and not the increased value which it has acquired by the improvements made upon it during his occupation. If we find that this tenement was of no greater value than 2*l.* 2*s.* a year at the time when the pauper took and entered upon it, that must be deemed its value at the time *he came to settle in it*. It cannot be that its value is to be perpetually fluctuating afterwards, the time pointed to being that when he comes to settle in it, at which time, if it be not of the annual value of 10*l.*, he does not acquire a settlement by it. I forbear entering more into detail in this case, because I fear that many of the doubts that have arisen upon subjects like the present are owing to extraneous *dicta* that have from time to time fallen from the Bench. The principle, however, seems to be this, that where a party comes into a parish, with a sufficient credit to acquire the taking of a tenement of 10*l.* a year, this shall entitle him to reside irremovably.—BAYLEY J. The value of the tenement must be taken as of the time when the person comes to settle in it. The case of *The King v. Bilsdale Kirkham* (a) is a strong authority to this point. That case was shortly this: the pauper rented a tenement at 4*l.* a year, which during his occupation became of the value of 15*l.* a year; and it was held, that evidence to prove it of the increased value ought to

(a) 2 Bott, pl. 202.

have been received, because he being tenant from year to year, the lease began afresh every year, and was in point of law a new demise. This was the express ground of distinction taken by Lord Mansfield in that case. — ABBOTT J. This case is neither within the words nor the meaning of the act of parliament. — *Per Curiam*, Order of Sessions confirmed.

82. *Rex v. Thornham*, E. T. 8 G. 4.—6 B. & C. 733.—Upon appeal against an order of justices, for the removal of *R. Hammond*, labourer, his wife, and children, from the parish of *Sedgford*, in the county of *Norfolk*, to the parish of *Thornham*, in the same county; the sessions confirmed the order, subject to the opinion of this Court on the following case:—The pauper being a married man, went on *Midsummer-day* 1812, to live with one *Barsham*, a farmer residing in the parish of *Thornham*, as his shepherd, under the following written agreement:—“*April* 28th, 1812, hired *R. Hammond*, shepherd, at 12s. per week, 6d. per head a lamb at clip-day, three weeks’ board in lambing, meat of victuals, and pluck when he kills a pig, “and to have twenty-one ewes going, to come to his place at *Midsummer-day* next.” The pauper came to live with *Barsham* under this agreement, and brought with him the ewes and lambs and his furniture. For the first quarter of a year he resided in *Barsham’s* farm-house, and for the remainder of the two years he lived in a cottage of his master’s, near the farm-house, with his wife and family, rent free. The going of the twenty-one ewes was worth more than 10*l.* a year. During a fortnight or three weeks of the first year, the ewes were fed off *Barsham’s* farm on the turnips of a neighbouring farmer, and during part of the second winter they were fed on straw. —BAYLEY J. I am of opinion that the pauper did not gain any settlement in this case in the parish of *Thornham*. He stipulated to have the going of twenty-one ewes. I think the fair meaning of the expression is, that his twenty-one ewes were to be with, and to go with his master’s flock, and were to be fed from time to time upon growing produce, or on hay as his master’s flock was. If the term “going” has acquired in that part of the country where the bargain was made, the meaning attributed to it in argument, and the court of quarter sessions so understood it, they should have stated that in the case, and then we should have been bound to have understood the word in the sense in which it was found to have been used. But, without any such explanation, we must understand it in that sense which usually belongs to the word. And so construing it, the meaning of this bargain was, that the servant was to have the ewes fed either upon growing produce, or on hay and straw, as his master’s flock was, and then it is quite clear that no settlement was gained. For the authorities establish, that in order to confer a settlement, it must be part of the bargain itself that the cattle should be pasture fed; and that it is not sufficient that they are in fact so fed. Mr. *Nolan* in his *Treatise on the Poor Laws*, vol. ii. p. 19, 20., (a text book from which the profession derive great assistance,) cites, as authorities to this effect, *Rex v. Bardwell* (a), *Rex v. Tisbury*, 14 G. 3. (b); and *Rex v. Darley Abbey* (c). In this last case it was firmly established, that it must be part of the contract that the cattle should

Where a shepherd served a farmer for two years, under an agreement for “12s. per week, and to have twenty-one ewes going:” Held, that this contract only gave the shepherd a right to have his ewes fed in the same manner as his master’s flock, either on pasture or on dry food, and, therefore, that the pauper did not gain any settlement in *T.*, although the feed of the ewes was worth more than 10*l.* a year, it not being any part of the bargain that the sheep should be pasture fed.

(a) 2 B. & C. 161. 2 Bott. pl. 160. (b) Cited in *Rex v. Darley Abbey*, 14 East, 280. (c) 14 East, 280. 2 Bott. pl. 151.

be pasture fed. *Rex v. Oswald Twissle (d)* also shews, that the contract must be to feed the cattle with the growing produce of the land. In that case the cow might be, and in fact was, pasture fed; yet as it did not appear to have been part of the bargain that she should be pasture fed, hiring of her milk was held not to be the taking of a tenement, and the doctrine was recognised and acted upon in *Rex v. Sutton St. Edmunds (a)*. In all the cases cited in the argument, there was a right of turning the cattle on a particular piece of land. A *cattle gate* imports a right of pasture on particular ground. Considering, therefore, the terms of this contract between the master and servant, and believing that neither of them had any very accurate idea of the meaning of the term "going," I think that when they stipulated that the latter should have twenty-one ewes going, they must be taken to have used that word in its ordinary sense, thereby importing that the twenty-one ewes should go with the master's flock wherever it went, and should be fed from time to time as his flock was, either on pasture or on dry food; and if that be the meaning of the term *going*, it was no part of the contract that the ewes should be pasture fed, and the case falls within the principles laid down and acted upon in the several authorities which I have referred to. Consequently, no settlement was gained in the parish of *Thornham*. The order of sessions must therefore be quashed.—*HOLROYD J.* The word "going" has no technical meaning. I think that, in its ordinary sense, and when used in relation to the subject-matter of such a contract as this, it imports that which was explained by the other words used in the contract in *Rex v. Bardwell (b)* to be its meaning there, viz. that the servant's cattle should go with his master's flock. The contract, therefore, in this case, gave the servant no right to have his ewes pasture fed; and that being so, the authorities referred to establish that no settlement was gained in *Thornham*.—*LITTLEDALE J.* This case depends entirely upon the meaning of the term "going." I am not aware that that word is used in the country in the sense attributed to it in the course of the argument. If the court of quarter sessions had found that the word "going" had that particular meaning in the part of the country where the bargain was made, we should have been bound by it. But there being no such finding, we ought to understand that word in its ordinary sense, and so understanding it, I think the meaning of the contract was, that the twenty-one ewes were to go as the other ewes went, viz. to be fed on growing produce or on dry food as his master's cattle were; and if that be so, then it is quite clear that the going of twenty-one ewes did not constitute a tenement, and, therefore, no settlement was gained in the parish of *Thornham*.—Order of sessions quashed.

83. *Rex v. Great Bolton, E. T. 9 G. 4.*—8 B. & C. 71.—Upon an appeal against an order of two justices, whereby *Lucy Hall*, single woman, was removed from the township of *Great Bolton*, in the county of *Lancaster*, to the township of *Little Bolton* in the same county, as the place of her settlement, derived from her mother *Mary Hall*, the sessions discharged the order, subject to the opinion of this court on the following case:—The pauper's mother, *Mary Hall*, being a widow, went to reside in *Little Bolton* in May 1823, where

The 59 G. 3. c. 50. requires, inter alia, that in order to acquire a settlement by the renting of a tenement, it shall consist of a separate and

(a) Cited in *Rex v. Sutton St. Edmunds*, 1 B. & C. 538.

(a) 1 B. & C. 538. 2 Bott. pl. 158. (b) 2 B. & C. 161. 2 Bott. pl. 160.

she hired a house consisting of six rooms and a cellar, and being a separate and distinct dwelling-house, for a year, and from year to year, at the annual rent of 11*l.*; and she continued to hold such house, and actually paid the aforesaid rent for the same, for the space of two years and upwards. Before she went to live in the house, but after she had hired it, and put some of her furniture into it, she underlet to one *J. Clough* the cellar under the house at 1*s.* 6*d.* per week, and he occupied the cellar during the whole of *Mary Hall's* tenancy. The cellar was let unfurnished, and *Clough* occupied nothing but the cellar. The cellar communicated with the street by an outer door, of which *Clough* kept the key; and at the time *Mary Hall* took the house the cellar communicated with the room above in the house, by means of a step-ladder and a trap-door, but when she went to live in the house she took away the step-ladder, which she placed in one of the higher rooms of the house, and shut the trap-door, expressly for the purpose of preventing any communication between the cellar and the rest of the house. The trap-door was not fastened, except that the furniture of the house was placed upon it, as upon other parts of the room floor. The trap-door was never used by the cellar tenant or by *Mary Hall*. When the cellar was underlet to *Clough* there was no fire-grate in it, and soon afterwards *Clough* applied to *Mary Hall* for a grate to be put up in the cellar. *Mary Hall* furnished the grate at her own expense, and it remained there until she left the house, when she sold the grate to *Clough*, who paid her for it. The pauper lived with her mother, as part of her family, in this house during the whole of her tenancy. The question for the opinion of this court was, whether, under the circumstances stated, the pauper's mother, on whose settlement that of the pauper depended, gained a settlement in *Little Bolton* under the 59 G. 3. c. 50.—Lord TENTERDEN C. J. The safest course in this case is to give effect to the particular words of the enacting clause. Where the legislature in the same sentence uses different words, we must presume that they were used in order to express different ideas. The words are, "that the house, or building, shall be held, and the land occupied." Here the house was held for one whole year, and the pauper's mother gained a settlement in *Little Bolton*. The order of sessions must therefore be quashed.—Order of sessions quashed.

84. *Rex v. St. Andrew the Less, Cambridge, E. T.* 10 and 11 Geo. 4.—10 B. & C. 743.—Upon an appeal against an order of two justices, whereby *Henry Unwin* his wife and children, were removed from the parish of *St. Andrew the less* in the town of *Cambridge*, in the county of *Cambridge*, to the parish of *Fen Ditton* in the same county, the sessions quashed the order, subject to the opinion of this Court on the following case:—The conservators of the river *Cam*, acting under the authority of an act of parliament, passed in the first year of the reign of Queen *Anne*, entitled "An Act for making the river *Cam* alias *Grant*, in the county of *Cambridge*, more navigable from *Clay Hithe Ferry* to the *Queen's Mill* in the university and town of *Cambridge*;" and of another act of the 53 G. 3. entitled "An Act for extending and amending an act of Queen *Anne* for making the river *Cam* more navigable from *Clay Hithe Ferry* to the *Queen's Mill* in the county of *Cambridge*," are empowered by the latter of the said acts to let to farm the tolls, duties,

distinct dwelling-house or building, or of land, or of both, bona fide hired at and for 10*l.* a year at the least, for the term of one whole year, and that such house or building shall be held, and the land occupied, for the term of one whole year: Held, that a settlement was gained under this statute by a pauper hiring and holding for one year a distinct and separate dwelling-house, although part of the house was let to an undertenant.

Where the lessee of tolls and a toll-house of navigation underlet the same for the remainder of a term of three years, at the annual rent of 42*l.* and the under-lessee occupied them for upwards of a year and paid a year's rent, and it was found as a fact that the toll-house had always been used as a public

house as well as for the collection of tolls, and was worth 25*l.* a year if let as a public house without the tolls, and 4*l.* a year if not so let: it was held that the under lessee did not gain any settlement by the renting of a tenement, inasmuch as he was a person renting the tolls, and residing in a toll-house of a navigation, within the 54*G.* 3. c. 170. s. 5.

and rates by the said act made payable, or any part or parts thereof, and also the messuages, buildings, yards, gardens, and premises belonging, or which shall belong, to the said conservators. In pursuance of this power the said conservators, on the 14th of June 1825, duly demised and let to farm unto one *Thomas Nutter*, common brewer, for the term of three years, all those the tolls, duties, and rates which, by virtue of the said acts, or one of them, and the orders of the conservators of the said river, were then payable at *Baitsbite Sluice* on the same river; and which tolls, duties, and rates were specified in the first schedule thereunder written, and all and singular the powers and authorities by the said acts, and each of them, created and given for collecting and recovering the same; and also the messuage, sluice-house, or tenement, outbuildings, yards, and gardens belonging to the said sluice-house, together with the use of the several fixtures and effects then remaining, and being in, upon, or about the said messuage, sluice-house, or tenement, outbuildings, yards, and gardens, and which were specified in the second schedule thereunder written, at the rent of 56*l.* 14*s.* a year. And *T. Nutter* did thereby covenant, at his own costs, to pay and bear all taxes, rates, assessments, charges, and impositions whatsoever that should or might be charged upon the said thereby demised premises, or on the occupier or occupiers, owner or owners thereof, in respect of the same by authority of parliament, or otherwise howsoever, for or by reason or in consequence of the said sluice-house being used or kept open as a public-house. And the conservators did covenant, at their own costs, to pay and bear all taxes, rates, assessments, and impositions whatsoever upon the thereby demised premises by authority of parliament, or otherwise howsoever, save and except those taxes, rates, assessments, charges, and impositions which should or might be charged on the said thereby demised premises, or on the occupier or occupiers, owner or owners, of the same in respect thereof, by reason or in consequence of the said sluice-house being used or kept open as a public-house. *Nutter* afterwards entered into an agreement in writing with *Henry Unwin*, dated the 6th of February 1826, whereby it was agreed between them as follows:—
 “*T. Nutter* having hired *Baitsbite Sluice* and the tolls thereof of the conservators of the river *Cam* for three years from Midsummer last, hereby agrees to let the same to *H. Unwin*, and *H. Unwin* hereby agrees to hire the same of *T. Nutter* from this day for and during the remainder of the three years, at the annual rent of 42*l.*, payable half yearly (but the said *Henry Unwin* to be allowed to receive from the conservators the annual salary of 10*l.* for looking after the sluice and water), the rates and taxes to be paid by *H. Unwin*.” The agreement also stipulates, that *Unwin* should buy all the beer and liquors which he might use or sell at the said sluice of *Nutter*, under a penalty. *Baitsbite Sluice* is part of the line of navigation under the control of the aforesaid conservators, and is situate between *Clay Hithe Ferry* and the *Queen's Mill*. *Unwin*, under this agreement, entered upon all the premises so demised by the said conservators to *T. Nutter*; he occupied them for upwards of a year, and paid a year's rent for the same. It was proved that the messuage and premises had always been used as a public-house, as well as for the collection of the tolls belonging to the conservators, and consisted of a dwelling-house, garden, paddock, and stable, and

were worth 25*l.* per year if *let* as a public-house, without the said tolls, duties, and rates, but only 4*l.* a year if not *let* as a public-house. It was also proved that *Unwin* was rated to the parish of *Fen Ditton* for the same as for a public-house and garden, at a rental of 4*l.* 10*s.* a year, and no more, but was not rated for the said tolls, duties, or rates; but that it is usual in *Fen Ditton* to assess property much below the rack rent. It was also proved that the house in question had no sign or name except the *Baitsbite Sluice House*, and had no sign; that there was no high road connecting it with the village of *Fen Ditton*, and that the towing-path is the only road passing by it.—Lord TENTERDEN, C. J. I am of opinion that the pauper gained no settlement in the parish of *Fen Ditton*. Here the pauper rented the tolls and resided in a toll-house of a navigation. He therefore was a person coming within both parts of the description mentioned in the act of parliament. I think we should defeat the object of the legislature if we held that he gained a settlement by residing in the toll-house. By deciding otherwise, we abide by the words of the act of parliament, taken in their ordinary and popular sense.—BAYLEY J. This is a case within the very words and probably within the mischief contemplated by the act of parliament.—LITLEDAL and PARKE Js. concurred.—Order of sessions confirmed.

85. *Rex v. Langrville*, E. T. 11 G. 4.—10 B. & C. 899.—Upon appeal against an order of two justices, whereby *E. Ewerby* and his wife were removed from the parish of *Langrville*, in the parts of *Lindsey* in the county of *Lincoln*, to the parish of *Stickney* in the said parts and county, the sessions quashed the order, subject to the opinion of this Court on the following case:—In the year 1800 the pauper became a confined labourer to a Mr. *Dickenson* in the parish of *Langrville*; he was to have thirty guineas a year, a house, two gardens, and a rood of potatoes. After the bargain was made, his master said he might have the milk of a cow; and shortly after going into the service he had a cow, which was fed upon a close of his master's during that season of the year when cattle are pasture fed. The value of the house, gardens, and the rood of potatoes was under 10*l.* a year, but with the addition of the keep of the cow upon the land amounted to more than that sum. The court of quarter sessions were of opinion that the pauper gained a settlement in *Langrville* by residing there more than forty days, and occupying as above stated. This case was argued on a former day in this term.—Lord TENTERDEN C. J. The question in this case is, whether a settlement was gained by the occupation of a tenement of the yearly value of 10*l.* in the parish of *Langrville*? In order to constitute this species of settlement under the 13 and 14 Car. 2. c. 12., it is necessary that the pauper should have an *interest* in the subject of the occupation (such subject being of the requisite yearly value), as *tenant or occupier*; though it is not necessary that he should be under an obligation to pay rent, or that he should have more than an estate at will, *Rex v. Fillongley* (a). It has also been established, by a series of cases which were considered and confirmed in that of the *King v. Benneworth* (b), that it was a sufficient occupation of a tenement if the pauper had an interest in a part of the profits of the

A pauper in 1800 was hired, as a confined labourer, at thirty guineas a year. He was to have a house, two gardens, and a rood of potatoes. After the bargain was made, his master said he might have the milk of a cow; and shortly after going into the service, he had the milk of a cow, which was fed on his master's close during that part of the year when cattle are pasture fed. The value of the house, gardens, and the rood of potatoes, was less than 10*l.* a year, but, with the keep of the cow upon the land, amounted to more than that

(a) 2 B. & C. 755.

(b) 1 T. R. 458. 2 Bott. pl. 161.

sum : Held, that the pauper did not gain a settlement by the occupation of a tenement of the yearly value of 10*l.* ; first, because it was no part of the contract that the pauper should have the milk of a cow ; and, secondly, assuming that it was so, it was not part of the contract that the cow should be pasture fed.

land, by perception by the mouths of his cattle. But it is essential, whether the subject of occupation be the land itself, or a part of its profits, that the pauper should have an interest as tenant or occupier,—a possession by mere licence without that interest is not enough. If a person were permitted by the owner of a pasture to feed his cow or sheep upon it, for a time, without any valuable consideration, and without reference to any contract between them, but by a mere act of charity or favour, no settlement would be gained by such a permissive enjoyment of the produce of the land. But if there had been a contract with the owner for a sufficient consideration, by which the pauper had a right to part of the profits of the soil, to be taken by his cattle, he would have an interest ; and his occupation with that interest, (if those profits were of the requisite annual value,) would confer a settlement after a residence of forty days. In the case of *The King v. Benneworth*, which was so much relied upon, in the argument of this case, by the counsel for the appellants, as an authority that a gratuitous occupation was sufficient, it appeared that two heifers were substituted by the consent of the master for the cow, which the pauper had a right by his contract to feed on the master's land. The pauper, therefore, may be considered as having had, by the act of the owner of the soil, as much interest in the land by the feeding of the heifers as he had before by the feeding of the cow. The perception of the larger portion of the profits by the former was equally referable to an interest in the land, as that of the smaller portion by the latter. In the present case, however, the sessions find that the master gave permission to the pauper to have the milk of a cow, *after* the bargain was completed ; and though it be taken that the cow was fed on the land, and that he meant at the time that the cow *should be fed on the land*, (which, however, does not distinctly appear, nor is there any thing to shew that he would not have kept his promise, and even performed his contract, if the milk formed part of the bargain, by allowing the milk of a cow fed otherwise than on the land,) we think this must be considered as having been done in consequence of a mere act of kindness or favour of the master, not referable to any contract, and that no interest was thereby acquired by the pauper in the profits of the land ; consequently no settlement was gained by him in the respondent parish of *Langrville*. The order of sessions must therefore be quashed.—Order of sessions quashed.

A pauper rented a windmill and a brick-built cottage and garden at the rent of 30*l.* per annum for six years, and during that time held and occupied the same, and actually paid that rent, and was rated to and paid the rates for the relief of the poor. The cottage and garden, with the mill, were together of more than the annual value of 10*l.*, but exclusive of the mill, they were not of that annual value. The mill was of wood, and had a foundation of brick ; but the wood-work was not inserted in the brick foundation, but rested upon it by its own weight alone. No part of the machinery of the mill touched the ground or any part of the foundation : Held, that the windmill not being affixed to the freehold, nor to any thing connected with it, was not parcel of a tenement, and, consequently, that the pauper gained no settlement.

86. *Rex v. Otley, T. T. 11 G. 4. & 1 W. 4.*—1 B. & Ad. 161.—Upon appeal against an order of two justices, whereby *Samuel Stammers* and his four children were removed from the parish of *St. Mary, Lambeth*, in the county of *Surrey*, to the parish of *Otley*, in the county of *Suffolk*, the sessions confirmed the order, subject to the opinion of this Court on the following case :—*Samuel Stammers*, the pauper, rented of *James Bedwell*, of *Ipswich*, carpenter, in the appellant parish, a windmill called a smock mill, a brick built cottage, and a

small garden, at the rent of 30*l.* per annum, during the space of six years, and three quarters of another year, ending *Midsummer* 1827; and during the whole of that time held, occupied, and actually paid for the same the said sum of 30*l.* per annum, and was rated to and paid several rates for the relief of the poor of the parish of *Otley* in respect of the cottage and garden, and also of the mill, at the estimated value of 6*l.* per annum. The cottage and garden, with the mill, are together of more than the annual value of 10*l.*, but the cottage and garden, *exclusively of the mill*, are not of that annual value. The mill is of a circular form, and of wood, having a foundation of brick twelve inches high from the ground, in which the wood-work is *not inserted, but rests upon it by its own weight alone*. No part of the machinery of the mill touches the ground or any part of the foundation; the whole is confined to the wooden part of it, which has two floors; but on the ground within the brick foundation, planks are laid down so as to form a flooring, and the mill would work as well upon the ground as upon the brick foundation. Some time after the erection of the mill, the tenant placed mortar on the inside and outside of the cill or bottom part of the wood work of the mill, for the purpose of excluding the weather, mortar so placed not acting as a cement between wood and brick work; and he also fixed posts in the ground, which sloping towards the mill, supported steps by which the mill was entered. The question for the opinion of the Court was, Whether the mill in question was a tenement by the renting of which the pauper could acquire a settlement in *Otley*?—BAYLEY J. The question is, Whether the mill be parcel of a tenement? To be so, it must be part and parcel of the freehold. Now, it is not parcel of the freehold unless it be affixed to it, or to something previously connected with it. Here the mill was not affixed to the land, but merely rested on a foundation of brick. The sessions have found that if it had stood upon the ground, it would have worked as well. If it had, the only difference would have been, that it probably would have rotted. This is analogous to the case of a barn set upon pillars; and that is nothing more than a chattel. The windmill in this case would clearly have gone to the executor, and not to the heir.—LITTLEDALE, J. This is precisely within the case of *The King v. The Inhabitants of London-thorpe* (a). It is attempted to be distinguished, because the tenant in that case had permission from the landlord to put up the mill, and it was treated by both as a chattel; but that circumstance can make no difference. Suppose there were two mills in two distinct townships, and one of the townships treated the mill as a tenement, and the other, as a mere chattel. That would make no difference. It must depend upon the nature of the building, and not upon the mode of treating it, whether it be a tenement or not.—PARKE J. I am of the same opinion. To constitute a tenement, it is necessary that the structure should be affixed to the soil, or to something annexed to the soil. Here the windmill rested merely upon the brick foundation, without being annexed to it by cement.—Order of sessions quashed.

87. *Rex v. Huntsham*, T. T. 1 W. 4. 2 B. & Ad. 503.—Upon an appeal against an order of two justices, whereby *Henry Vinnicombe* was removed from the parish of *Sampford Peverell* in

In 1818 the pauper took of one A. a field of potatoes at

the rent of 12*l.* A. agreed to supply lime and manure, and to give the field three ploughings to prepare it for planting potatoes, without which the field would have been worth less than 10*l.* a year. About a week after the agreement the pauper entered upon the land, it having then been only once ploughed, and no lime or manure having been supplied, but A. performed all he had agreed to do, before the pauper planted his potatoes, and the field was then worth 12*l.* a year: Held, that as by contract the land was to be made of the value of 10*l.* a year at the landlord's expense, the tenement was of that value within the meaning of 13 & 14 Car. 2. c. 12., when the pauper came to settle, though the improvement was not completed until after he entered.

the county of *Devon*, to the parish of *Huntsham* in the same county, the sessions confirmed the order, subject to the opinion of this Court on the following case:—The pauper's birth settlement was in *Huntsham*. On the 1st of *April* 1818, he took of one *Hewett*, in the parish of *Burlescombe*, a field for potatoes, at the rent of 12*l.* *Hewett* agreed to supply twelve hogsheads of lime and a heap of manure, and to give the field three ploughings to prepare it for the pauper to plant his potatoes, without which the field would have been worth less than 10*l.* a year. About a week after the agreement, the pauper went upon the land and worked upon it, at which time the field had only been once ploughed, and none of the lime and manure had been then supplied; but *Hewett* performed all that he had agreed to do before the pauper planted the potatoes. The pauper, who took off his crop in the autumn, planted the potatoes himself, and paid the whole rent of 12*l.*; and the field, ploughed and manured as it was by *Hewett*, was worth that sum. The pauper went to live in *Burlescombe* in the year 1817, and lived there during the whole time that he occupied this field, which was about six months, and he occupied the field for more than forty days after *Hewett* had done his work.—*LORD TENTERDEN, C. J.* This case is not distinguishable from *Rex v. Poulton with Fearnhead*, and must be governed by it.—Order of sessions quashed.

The pauper took a house, consisting of a house place, a chamber over it, and above that a garret, which extended over the lower rooms in the adjoining house. He afterwards took the adjoining house in addition to the rest of the premises, from the same landlord, for a year at 10*l.* rent. The whole was under the same roof, though there was no internal communication. He dwelt in that part which he first hired, and put a journeyman to work in the other:
Held, that he gained a settle-

88. *Rex v. Macclesfield, M. T. 2 W. 4.—2 B. & Ad. 870.*—Upon an appeal against an order of two justices whereby *W. Hooley* and his wife and son were removed from the township of *Adlington*, in the county of *Chester*, to the township of *Macclesfield*, in the same county, the sessions confirmed the order, subject to the opinion of this court on the following case:—The pauper, who was a silk weaver, and used to employ journeymen, and had looms of his own, about *September* 1826, took a house in *Compton Row, Macclesfield*, at 2*s. 6d.* per week. The house consisted of a house-place, a chamber over the house-place, and over that there was a garret which extended over the lower rooms in the adjoining house. About six months after the first taking, the pauper took the adjoining house under his garret, and under the same roof, from the same landlady, and paid 4*s.* a week for the whole together. In a week or two the pauper called on his landlady, and agreed with her for the whole premises at the same rate for a year. He occupied the premises for nearly two years, paying the rent sometimes once a fortnight, and sometimes once a month, as he found it convenient, and the whole rent was paid. He furnished the new part, and put into it a journeyman who worked for him, and who paid the pauper 1*s. 6d.* per week for it. At one time the pauper's step-son, a married man with a family, slept in the new part, the pauper having put a bed in it. The step-son paid the same rent which the pauper did. This was before the pauper let it to the journeyman. There was a passage under the chamber floor, and betwixt the two houses, which led from the public street to other houses; and there was no internal communication betwixt the two houses.—*LORD TENTERDEN, C. J.* 1

should have been better satisfied if the justices in sessions had themselves found that these premises formed one distinct building. But it seems to me that they have found so in effect; for it is stated, that the whole was under the same roof: that being so, it is a distinct building, which satisfies the words of the act.—**PARKE J.** We must take it, from the facts stated in the case, that this was one distinct building. I am by no means satisfied, that the occupation of a dwelling-house, and another distinct building in the same parish, may not be sufficient to confer a settlement. The object of the act was to exclude all questions about the occupation of rooms. It appears to me not to be less a tenement within the meaning of the act, where one detached house is occupied with another. It is not, however, necessary to decide that point here. That there was a sufficient occupation, by the under-tenant, is settled by *Rex v. Great Bentley* (a); though that will not be sufficient since the new statute 1 W. 4. c. 18., which requires an occupation by the person hiring the premises.—**TAUNTON J.** To prevent any misconstruction, it must be understood that the Court decides on the statement of the facts in this case. It is stated that one garret went over both houses, and they were under one roof. It may be too much to say, that two dwelling-houses can constitute one distinct dwelling-house, but this is a separate and distinct building. Then there has been an occupation within the words of the act, which does not say by whom the tenement is to be occupied.—**PATTERSON J.** It is not necessary now to decide, whether the occupation of two distinct dwelling-houses or buildings in different parts of a parish will be sufficient or not. This was one distinct building under one roof—Order of sessions quashed.

89. *Rex v. Nacton, E. T. 2 W. 4.—3 B. & Ad. 543.*—Upon appeal against an order of two justices for the removal of *Mary Gibson*, widow, and her children, from the parish of *Nacton, Suffolk*, to the parish of *Croxton, Norfolk*, the sessions quashed the order, subject to the opinion of this Court on the following case:—The paupers were removed to the parish of *Croxton*, as the last place of legal settlement of *John Gibson*, the deceased of the said *Mary*. The settlement of the deceased was in *Croxton* till *Midsummer* 1804: he then went under a yearly hiring into the service of *R. Stubbings*, at *Barnham*, as shepherd's page, where he lived one whole year. *Stubbings* had been hired by *J. Chambers*, a farmer at *Barnham*, as his shepherd, to go into his service at that same *Midsummer*, and brought with him to *Barnham* a certificate, dated 1st of *June* 1804, acknowledging him, his wife and children, to belong to *St. Peter, Thetford*, without which certificate *Chambers* would not hire him. *Stubbing's* agreement with *Chambers*

ment under the 6 G. 4. c. 57. by renting a tenement consisting of a distinct building.

A., a certificated man, was hired by a farmer residing in parish of *B.*, as his shepherd, to go into his service at *Midsummer*. It was agreed between them, that *A.* should have a cottage in *B.* rent free, and the going of 105 sheep with his master's flock. The term "going" in the county where the contract was

made, meant that the sheep should be pasture fed, and the feeding on pasture in *B.* was worth 10*l.* per annum. At the same *Midsummer* *A.* hired *C.* to serve him for a year as shepherd's page, and he did so serve in parish *B.* till the following *Midsummer*: Held, upon a special case stating these facts as found by the sessions, first, that it was to be inferred from the case, that the feeding of the cattle was to be in parish *B.*, and, therefore, that there was a taking of a tenement of 10*l.* per annum in that parish by *A.*

Secondly, that *C.* gained a settlement by hiring and service with *A.*, because the latter never resided in parish *B.* by virtue of the certificate; for having come there to settle on a tenement of 10*l.* per annum, he was irremovable as soon as he came into the parish, although he could not gain any settlement there until he had resided forty days.

was, that he should have a cottage in *Barnham* to live in rent free, the going of 105 sheep with his master's flock, ten coombs of barley, ten coombs of rye, and firing, in lieu of wages. The occupation of the cottage was necessary for the due performance of the shepherd's service, and out of his allowance he had to lodge and maintain his pages. The appellants contended that this "going" was a tenement sufficient to determine the certificate. The sessions found that the term "going" meant, in the county where the contract was made, that the sheep should be pasture fed, but that in bad weather the sheep were to be fed on turnips or hay with the master's; and that the actual feeding of the sheep in pasture in *Barnham* was worth more than 10*l.* a year. The question for the opinion of this Court was stated as follows, Whether there was a sufficient coming to settle by *Stubbings* on a tenement of 10*l.* a year, and if the living in the cottage, and the going of the sheep, constituted a sufficient tenement? If this Court hold in the affirmative, the decision of the sessions right, but otherwise the paupers were properly removed to the parish of *Croxton*.—Lord TENTERDEN C.J. It is now too late to contend that if the remuneration of a person hired to serve in husbandry, be by the pasture of cattle on his master's land, that that is not the taking of a tenement sufficient to confer a settlement, if it be of the value of 10*l.* Here the sessions have found that the term *going* meant, in the county where the contract was made, pasture feeding; and that although in bad weather the sheep were to be fed on hay or turnips, the actual feeding on pasture in *Barnham* was worth more than 10*l.* a year. It is said that this *going* does not constitute a tenement, because there is no locality. There is none certainly expressed in the words of the contract between *Stubbings* and *Chambers*; but it may be abundantly collected, from the other parts of the case, that the feeding of the sheep was to be in *Barnham*; for, first, *Stubbings* was to have a cottage in *Barnham*, the occupation of which was necessary to the performance of his duty as shepherd, and the "actual feed of the sheep in pasture in *Barnham*" is found to be worth more than 10*l.* a year. The only doubt on my mind is as to the effect of the certificate. Upon that point we will take time to consider.—LITLEDALE J. It is perfectly well established, that if a party takes a tenement of 10*l.* a year value, whether he pays for it by money or services, he gains a settlement. Here the sessions have found that *Stubbings* was to have the going of 105 sheep with his master's flock, but it is not to be inferred from thence that the sheep were to be fed out of the parish. The meaning of the term *going* is, that they should be pasture fed. I think, from the fact found in this case, it may be inferred that the feeding of the sheep was to be in *Barnham*; and that being so, then, according to *Rex v. Benneworth* (a) the husband of the pauper would gain a settlement in *Barnham*, unless he was prevented by the certificate. That question deserves further consideration.—PARKE J. I am of opinion that in this case there was a taking of a tenement within the statute 13 & 14 Car. 2. c. 12., and that *Stubbings*, by having made an agreement with his master for the *going* of the 105 sheep, and residing in the parish forty days, gained a settlement. It is too late now to question the propriety of the rules, that the per-

(a) 2 B. & C. 775. 2 Bott. pl. 161.

ception of the profits of land by the mouths of cattle, is a tenement within the statute 13 & 14 Car. 2. c. 12., and that the occupation of a tenement of the value of 10*l.* will give a settlement, whether the rent be paid in money or in labour. The law upon that subject was finally settled in *Rex v. Benneworth* (a). That being so, the question is, then, whether it sufficiently appears that the pasture feeding was to be in *Barnham*; and the case resolves itself into the question, what was the meaning of the contract between the parties. I take it to be clear that the feeding on pasture was to be in the parish of *Barnham*, for the cottage which was necessary for the due performance of *Stubbings's* duty as shepherd was in that parish, and the actual feeding of the sheep on pasture in *Barnham* is found to be worth more than 10*l.* a year. The pauper's husband, therefore, came to settle on a tenement of 10*l.* per annum in *Barnham*. On the other question, as to the effect of the certificate, I agree that it should be further considered.—PATTERSON J. I think that, in this case, there was a taking of a tenement by *Stubbings*; the only difficulty is as to its locality. *Rex v. Darley Abbey* (b) shews, that the meaning of the parties as to the place where cattle are to be pastured fed, may be collected from the subject-matter of the contract and the other circumstances of the case. That being so, I infer from the facts found by the sessions, that the going was to be in the parish of *Barnham*, for the cottage was in that parish, and the value of the pasture feeding there is found to be of the value of 10*l.* As to the question on the certificate, that may admit of some doubt. *Cur. adv. vult.*—Lord TENTERDEN C. J. now delivered the judgment of the Court. We have already decided that the agreement between *Chambers* and *Stubbings*, that the latter should have the going of 105 sheep with his master's flock, was a taking of a tenement in *Barnham* parish within the meaning of the statute 13 & 14 Car. 2. c. 12. The point reserved for consideration was, whether *Stubbings* was to be looked upon as having resided in that parish under a certificate, so as to prevent the husband of the pauper from gaining a settlement by hiring and service with him. It was urged, that as *Stubbings* could not acquire a settlement by the taking of a tenement until he had resided forty days in the parish, he must, at all events, be considered as having resided for those forty days under the certificate, and, consequently, that the pauper had not served him for a year after the certificate was discharged. It appears to us, however, that *Stubbings* is not to be considered as having resided in *Barnham* under the certificate during any part of the year; for he came to settle on a tenement of the value of 10*l.*, and was therefore irremovable as soon as he came into the parish. He never resided there under the certificate. The pauper's husband, therefore, was not serving a person residing under a certificate. If there had been no certificate whatever, the case would have been just the same. *Stubbings* was irremovable as soon as he came to settle on the tenement, and gained a settlement when he had resided forty days.—Order of sessions confirmed.

(a) 2 B. & C. 775.

(b) 14 East, 281. 2 Bott. pl. 151.

Of the Species of Tenure.—2 Bott. pl. 162.

A man, by marrying a woman who was a yearly tenant of premises under the annual value of 10*l.*, held to gain a settlement.

90. *Rex v. Ynyscynhanarn*, T. T. 8 G. 4.—7 B. & C. 233.—Upon appeal against an order of two justices, whereby they removed *H. Hughes*, his wife, and children, from the parish of *Aberdaron*, in the county of *Carnarvon*, to the parish of *Ynyscynhanarn* in the same county, as the place of settlement by birth of *H. Prichard*, the pauper *H. Hughes*'s father, the sessions confirmed the order, subject to the opinion of this Court on the following case:—It appeared that *Hugh Prichard*, the pauper's father, was born in the parish of *Ynyscynhanarn*, and that the pauper had gained no settlement in his own right; that one *Hugh Williams*, the father of one *Elizabeth Hughes* hereinafter named, resided as tenant on a small farm called *Peny Cwin*, in the parish of *Aberdaron*, and which he held at the rent of 3*l.* 5*s.*, and died there on the 9th of *June* 1782; that previous to the said *Hugh Williams*'s death, he made a will, dated the 3d of *May* 1782, bequeathing all his personal estate and effects, subject to the payment of some small legacies, to his daughter, the said *Elizabeth Hughes* before named, and appointed her sole executrix thereof; that *Elizabeth Hughes* continued to reside at *Peny Cwin* from the time of her father's death until the time of her marriage as after mentioned; that *Hugh Prichard*, the pauper's father, never saw *Hugh Williams*; that the first time *Hugh Prichard* saw the said *Elizabeth Hughes* was, when on her return, after taking her land; that on the 27th of *July* 1782, *Hugh Prichard* married *Elizabeth Hughes*, and thereupon went to reside with her at *Peny Cwin*, where they continued many years; that *Elizabeth*, the wife of *Hugh Prichard*, proved her father's will on the 23d of *May* 1783; that *Hugh Williams* never paid any taxes in *Aberdaron*, nor did *Elizabeth Hughes*, while sole, nor *Hugh Prichard* after his marriage (except county-bridge rate), until after the year 1795, and that *Hugh Prichard* never paid more rent for *Peny Cwin* than 7*l.* 18*s.* The sessions confirmed the order of removal, subject to the opinion of this Court as to the correctness of that conclusion upon the evidence as stated.—BAYLEY J. The wife in this case was executrix of a tenant from year to year. *Rex v. Stone* shews that an executor of a tenant from year to year of an estate under 10*l.* a year may gain a settlement by residing on it forty days. If, therefore, the wife took the interest as executrix, and in that character became tenant from year to year and married, a settlement would be gained by her husband. If she took the land as tenant for a year, she became tenant from year to year, and the term would vest by marriage in her husband. *Rex v. Ilmington* shews that a man will acquire by marriage the same right to a settlement which an executor or administrator does by the death of the person whom he represents. In that case a woman purchased a leasehold tenement for 6*l.*, and afterwards married, and her husband resided on the premises and died. It was held that the husband by marrying gained a settlement, for upon marriage his wife's estate vested in him by law; and although she could not gain a settlement by purchase, yet her husband having acquired one by it, the widow thereby derived a settlement through him. Here the husband by marriage acquired, by operation of law, the same interest in the property of his wife which an executor does

by death in the property of his testator. The executor of a tenant from year to year, of an estate under the value of 10*l.*, may gain a settlement by residing upon it forty days, because the interest vests in him by operation of law. And, upon the same principle, a husband may gain a settlement by residing forty days upon an estate vesting in him by marriage, although it be of less annual value than 10*l.* I think, therefore, that a settlement was gained in *Aberdaron*, and that the order of sessions must be quashed.—Order of sessions quashed.

91. *Rex v. North Cerney, E. T. 2 W. 4.*—3 *B. & Ad.* 463.—Upon an appeal against an order of two justices, whereby *John Lovesey* and *Elizabeth* his wife were removed from the parish of *Winchcomb*, in the county of *Gloucester*, to the parish of *North Cerney*, in the same county, as the place of settlement, by apprenticeship, of the pauper *John Lovesey*; the sessions confirmed the order, subject to the opinion of this Court on the following case:—About five years ago (and after the expiration of the indentures under which the pauper had served in *North Cerney*) the pauper's wife *Elizabeth*, being at time a widow, took a house and garden, situate in the parish of *Winchcomb*, of one *Greening*, from *Michaelmas* to *Michaelmas*, at the rent of 3*l.* per annum. She went into the house immediately after taking it, and continued to reside therein until the 23d of July 1828, on which day she married the pauper *John Lovesey*, who immediately went to reside in the said house with his wife, and continued to live there from that time till the order of removal was made. Before the marriage, the rent was paid by the said *Elizabeth*, and after that time by the pauper. The question for the opinion of the Court was, whether the pauper gained a settlement in the parish of *Winchcomb* by his residence on the tenement, which had been so taken by his wife before her marriage.—Lord TENTERDEN, C. J. I am not able to distinguish this case in principle from *Rex v. Ilmington* and *Rex v. Ynyscynhanarn*. In the last mentioned case it was expressly decided, that a man by marrying a woman who was a yearly tenant of premises of less than the annual rent of 10*l.* gained a settlement. So here, upon the same principle, the pauper gained a settlement in the parish of *Winchcomb*, his wife having before her marriage, become the yearly tenant of a house and garden at the rent of 3*l.*, and that interest having, on the marriage, vested in him by operation of law.—LITLEDALE, PARKE, and PATTERSON, Js. concurred.—Order of sessions quashed.

A man marrying a woman, who, after the passing of the 59 G. 3. c. 50., has become a yearly tenant of premises at a rent of less than 10*l.* per annum, gains a settlement by forty days' residence thereon.

Of the Value of the Tenement.—2 Bott, pl. 213.

92. *Rex v. Aston, H. T. 57 G. 3.*—6 *M. & S.* 54.—Ante. pl. 81. The value of a tenement in respect of acquiring a settlement is to be taken as of the time when the party comes to settle on it; hence where a man took a piece of land for 99 years at the rent of two guineas a year on which he built two houses, each of the yearly value of five guineas, in one of which he lived and let the other at five guineas a year: Held, that he did not thereby gain a settlement.

93. *Rex v. Poulton-with-Fearnhead, E. T. 57 G. 3.*—6 *M. & S.* 252.—Upon appeal, the quarter sessions for the county of *Lancaster* confirmed an order for the removal of *Luke Whittle*, his wife and child, from *Warrington* to *Poulton-with-Fearnhead*, subject to the opinion of this Court upon the following case:—It was

The renting of twenty-seven perches of land for growing potatoes, at the price of 2*s.* 6*d.*

per perch, amounting to 3*l*. 7*s*. 6*d*., under an agreement with the landlord that he should furnish the tenant with manure sufficient for the culture of potatoes, was held to be a renting at the price above mentioned, although the manure was not furnished until after the holding commenced, and the value of the land to be let per acre on the ordinary terms of husbandry usual in letting farms, according to the course of good husbandry, did not exceed 4*l*. per acre; but when let on the terms above mentioned, it was of the value of 2*s*. 6*d*. per perch.

proved on the part of the respondents that the pauper's father rented a cottage in *Poulton* of the annual value of 6*l*. 10*s*., at the rent of 6*l*. 10*s*., and held at the same time a small piece of land of the annual value of 7*s*. 6*d*.; that he also took of one *Kay* 27 perches of land for growing potatoes, at the price of 2*s*. 6*d*. per perch, in the spring of 1813, during the time of his holding the said cottage and piece of land. The agreement with *Kay* was, that *Kay* should furnish him with manure sufficient for the culture of potatoes, and that he should get and set the potatoes. In pursuance of this agreement, about a fortnight after the making of it, and after the holding commenced, the manure was brought by *Kay*, and was put into the land by the pauper's father. The value of the land to be let by the acre, and upon the ordinary terms of husbandry usual in letting farms according to the course of good husbandry, did not exceed 4*l*. per acre, but when let upon the terms above specified, it was of the value of 2*s*. 6*d*. per perch, amounting in the whole to 3*l*. 7*s*. 6*d*. a sum sufficient, with the other tenements, for the purpose of a settlement. The pauper's father held the last-mentioned tenement for above forty days after the manure was put into the land, and during the same forty days occupied also the other two tenements above specified, and resided in *Poulton*.—The question was, whether, under the above circumstances, the pauper's father gained a settlement in *Poulton*, reference being had to the agreement with the landlord respecting the manure.—Lord ELLENBOROUGH, C. J. The difficulties that have been raised in argument are occasioned by the decisions, which I am almost inclined to wish had never been made, that a tenement of combined value is sufficient to constitute a settlement. However, taking this case as it stands upon the subsisting authorities, and keeping in sight the words of the act of parliament, which have been strongly and properly pressed upon our consideration, I ask myself, is this a coming to settle on a tenement of the yearly value of 10*l*.? The answer depends upon the value which is to be attributed to the 27 perches of land. Now, as to this, the party who comes to settle, contemplates the taking a tenement of the value of 3*l*. 7*s*. 6*d*. He contracts for 27 perches of land, with manure to be supplied by the landlord, and upon these terms the tenement was of that value; and if of that value the whole will exceed 10*l*. The pauper then undoubtedly comes to settle in contemplation that he has taken, and shall have the benefit of, a tenement above the value of 10*l*. But the question is put, are these 27 perches of the value of 3*l*. 7*s*. 6*d*. at the time he comes to settle? The answer is, they are not in point of actual permanency on the day when the party first takes possession, but they subsist in contract of that value at the instant he enters, and actually become so pursuant to the contract by act of the landlord, and the party afterwards occupies above forty days. In this way of considering it, the tenement is of the contemplated value contracted for by the landlord, and afterwards made good by him. If we are bound down to the precise moment when the party enters, the consequence will be that in many cases the improved value to which the landlord contracts to raise the land can never be taken into account. In many contracts there will be some stipulations of advantage to the tenant, increasing the value of the tenement, which induce him to come to settle upon it, on the faith of having this improved value made good to him; these, therefore, when

made good, may fairly be referred to the value at the time of the coming to settle. I might instance stipulations on the part of the landlord to paint and paper, or to make additions to the dwelling. In cases like these the value contemplated and engaged for by the contract, as it is an improvement from which the tenant is to derive the benefit, and perhaps his motive for coming to inhabit there, may fairly be set down to the account of its value at the time he comes to settle within the meaning of the act. I do not venture into all the cases for the purpose of reconciling the various *dicta* of learned Judges with the language of the statute. It would be an Herculean labour to conflict with, and I am not sure that it would be attended with success.—BAILEY J. I agree that this was a tenement of sufficient value to confer a settlement. The language of the statute 13 & 14 Car. 2. c. 12. imports, that on complaint within forty days after any person shall come to settle in any tenement under the yearly value of 10*l.*, two justices may remove him to the parish where he was last legally settled. It has been argued, that to constitute a tenement of the yearly value of 10*l.* so as to make the party irremovable under this act, or in other words to confer a settlement, the tenement must be of the requisite value at the moment when he enters upon it. But I think the argument would be more correctly stated thus: that the tenement must be of the value of 10*l.* at the time of entry, or to be made of that value at the expense of the landlord; and that this is so, appears by the distinction which has been taken where the improvement is to be at the expence of the tenant; in which case it has been held it ought not to be taken into the account. This was the principle on which *Rex v. Aston* was decided. The observation which is reported to have fallen from Mr. Justice *Le Blanc*, in delivering his opinion in *Rex v. Ringwood*, certainly was not made in reference to the distinction between the actual value of the land at the moment of entering, and its becoming of that value a short time afterwards, by the agreement and act of the landlord. It seems to me, that whenever it is a part of the contract for the letting that the land is to be improved at the expence of the landlord, and this is done, the tenement is to be accounted of the improved value. According to the language of some of the cases, the question is, Whether the pauper was of sufficient ability to obtain credit for a tenement of the yearly value of 10*l.* And certainly it is the same thing as it regards his ability, whether the land was of that value at the moment of taking it, or whether it was stipulated to be made so, and was made so afterwards at the expense of the landlord; I think both cases are equally within the words and spirit of the act.—ABBOTT J. I am also of opinion that the determination of the sessions was right. Mr. *Williams* admits that this case will be governed by some of the former decisions, unless it can be distinguished on special grounds; and for this purpose he desires that we would confine our attention to the precise period of the tenant's entering into possession; and he cites *Rex v. Aston*. But in that case it cannot escape our notice that the increased value rose out of several acts voluntarily performed by the tenant: here it arises not out of any act by the tenant, but from the act of the landlord stipulated for before entry, and done in pursuance of the terms of that contract. What is done by the landlord under such circumstances may, I think, fairly be considered as referable to the time of entry. If the Court were tied down to the precise time

of entering, it would lead to very subtle enquiries, which would be inconvenient, as to the instant of time when such and such repairs were made as increase the value of the tenement to the necessary amount. In order to avoid such enquiries, I say that what is contracted for before the entry to be done by the landlord, and is afterwards done in pursuance of that contract, may be considered as done at the time of entering.—HOLROYD, J. I think that where a tenant comes to settle on a tenement which by agreement the landlord at his expense is to improve to the value of 10*l.* a year, the tenement is of that value within the meaning of the statute, although the improvement was not made until after the time of entry; consequently that a settlement was acquired in this case.—Order of sessions confirmed.

By the statute 6 G. 4. c. 57. it is enacted, that no settlement shall be gained by reason of settling upon or paying parochial taxes for a tenement, unless the house, or building, or land (of which the tenement consists) shall be occupied under such yearly hiring, and the rent for the same, to the amount of 10*l.*,* be actually paid for the term of one whole year: Held, that no settlement is gained by settling upon a tenement, unless the rent for the term of one whole year whatever be its amount, be actually paid.

94. *Re v. Ramsgate, E. T. 8 G. 4.—6 B. & C. 712.*—Upon an appeal against an order of two justices, whereby *G. Sweetman*, his wife, and children, were removed from *Ramsgate*, in the *Isle of Thanet*, in the county of *Kent*, to the parish of *Saint Lawrence*, in the *Isle of Thanet*, in the same county, the sessions quashed the order, subject to the opinion of this Court on the following case:—In the month of *April* 1825, *S. Sweetman*, the wife of the pauper, (the pauper himself being of unsound mind), hired of *R. Croft, Esq.* a house in the parish of *Saint Lawrence*, for one year, at a rent of 15*l.* per annum, payable quarterly. The pauper and his family occupied the house for the year, and the pauper's wife paid the sum of 6*l.* 15*s.* towards the rent. Soon after the expiration of the year the landlord distrained upon the pauper's goods for the rent remaining due, and received under such distress, after payment of the expences thereof, the sum of 4*l.* 17*s.* 6*d.*, making the total rent received amount to 11*l.* 12*s.* 6*d.*—BAYLEY J. It is very desirable in all cases to adhere to the words of an act of parliament, giving to them that sense which is their natural import in the order in which they are placed. The stat. 59 G. 3. c. 50. enacts, “that no person shall acquire a settlement by reason of his dwelling for forty days in any tenement rented by such person, unless such tenement shall consist of a house or building, being a separate and distinct dwelling-house or building, or of land, or of both, bonâ fide hired by such person at and for the sum of 10*l.* a year at the least for the term of one whole year, nor unless such house or building shall be held and such land occupied, and the rent for the same actually paid, for the term of one whole year at the least, by the person hiring the same.” That statute, therefore, required that the rent (whatever its amount might be) should be paid for the term of one whole year. But as that statute applied only to settlements which might be gained by reason of the renting of a tenement, a settlement might still be gained by paying parochial rates in respect of a tenement of the annual value of 10*l.*, without complying with the requisites of that statute, and that was the cause of much litigation. The statute 6 G. 4. c. 57. was passed to remedy that inconvenience; and it recites, “that the settlement of the poor had been made to depend in some instances upon the annual value of tenements which they might have rented, or upon the annual value of tenements in virtue of which they had paid parochial rates, and that the ascertaining such value in such respective cases had given rise to very expensive litigation, and that doubts had been entertained whether the 59 G. 3. c. 50. had been effectual for the purpose of altering the law in respect of the neces-

“sity of proving the annual value of tenements so rented, and that “it was expedient that further provision should be made relating “thereto.” It then repeals the former statute, and enacts, “that “no person shall acquire a settlement by reason of settling upon, “renting, or paying parochial rates for any tenement not being his “own property, unless such tenement shall consist of a separate and “distinct dwelling-house or building, or of land, or of both, bonâ “fide rented by such person at and for the sum of 10*l.* a year at the “least for the term of one whole year, nor unless such house, or “building, or land shall be occupied under such yearly hiring, and “the rent for the same to the amount of 10*l.* actually paid for the “term of one whole year at the least.” It is very material to attend to the collocation of these words,—“for the term of one whole year “at the least.” They are the last words of a sentence, and, according to the grammatical construction, apply to both branches of the sentence. It is contended that they do not apply to the latter branch of the sentence, “the payment of rent,” but that the words “and “the rent for the same to the amount of 10*l.*” ought to be construed as if they were in a parenthesis; but I cannot collect either from the recital or from any of the previous provisions in the act, that they ought to be so read. I think that they ought to be construed according to the plain import which they bear in the order in which they are placed in the act. If the legislature had intended that in order to gain a settlement, it should be sufficient to pay rent to the amount of 10*l.*, the words “for the term of one whole year at the least,” should have immediately followed the words relating to the occupation. It is true, that the words “to the amount of 10*l.* a year at “the least,” create some difficulty, but that difficulty is not such as to warrant us in construing them as if they were placed in an order different from that in which we find them. Taking them in that order, their application is not confined to one branch of the sentence. Undoubtedly, it will follow from this construction, that if a person rents premises at a very high annual rent, he will not gain any settlement unless he pays the whole amount of one year’s rent. On the other hand, if the other construction were adopted, a person who rented premises at 15*l.* per annum, and resided three years on the premises, would gain a settlement by paying 10*l.* on account of one year’s rent. I cannot think that was intended. Upon the whole, I think that we are bound to construe the words of this act according to the natural import belonging to them, in the order in which they are placed in the act, and so construing them, I am of opinion that these words are not to be confined to one branch of the sentence, and, consequently, the rent actually reserved must be paid for the term of one whole year at the least. The pauper not having done that, no settlement was gained in the parish of *St. Lawrence*. The order of sessions must therefore be quashed.—HOLROYD J. I think that the words “for the term of one whole year at the least,” must be construed according to their nature and import in the order in which they stand in the act of parliament, and so construing them, it appears to me that the rent, which must amount to 10*l.* a year at least (but which may exceed that sum), must be paid for the term of one whole year at the least.—LITLEDAL J. concurred.—Order of sessions quashed.

The being charged with, and paying parochial taxes, did not, before the stat. 6 G. 4. c. 57. s. 2., confer any settlement until the party charged with, and paying the same, had resided within the parish forty days after he had been so charged, and since that statute passed, no person can acquire a settlement by reason of renting or paying parochial taxes for any tenement, unless it be of a certain description; and, therefore, where a pauper had rented a tenement (insufficient to confer a settlement under the 6 G. 4.) and in respect thereof, had been rated and paid parochial taxes, but had not resided thereon after such rating and payment forty days before the passing of the 6 G. 4., it was held, that he did not thereby acquire any settlement.

95. *Rex v. Ringstead, M. T. 8 G. 4.—7 B. & C. 607.*—Upon appeal against an order of two justices, dated the 17th of March 1827, whereby *Elizabeth*, the wife of *J. Sanders*, and their four children, were removed from the parish of *Kimbolton*, in the county of *Huntingdon*, to the parish of *Ringstead*, in the county of *Northampton*, the sessions confirmed the order, subject to the opinion of this Court on the following case:—The pauper's husband, who had absconded previous to the order of removal, hired a tenement after *Lady-day* 1825 in the parish of *Ringstead*, of the annual value of 10*l.* and upwards, from *Lady-day* 1825 to *Lady-day* 1826, and went to settle upon it on the 4th day of *May* 1825, being upwards of forty days before the passing of the 6 G. 4. c. 57. (22d day of *June* 1825.) A rate was made for the relief of the poor, which was allowed on the 27th of *May* 1825, and was paid a few days afterwards, being less than forty days before the passing of the said statute, (and the requisites mentioned in the 59 G. 3. c. 50. were not complied with, so that no settlement by renting the tenement could be gained under that statute.) On the 2nd of *March* 1826 a church-rate was made at a parish meeting for the parish of *Ringstead*, and on the pauper's husband coming into the parish on the 4th of *May* 1825, his name was inserted in the church-rate by the churchwarden, and the rate was afterwards paid by the pauper's husband. The question was, Whether a settlement was gained by either of such ratings or payments?—BAYLEY J. I think that in order to gain settlement in this case by the payment of taxes the pauper ought to have resided in the parish forty days after he had been rated and paid the taxes. By the statute 1 Jac. 2. c. 3. the forty days' continuance of a person in a parish (intended by the 13 & 14 Car. 2. to make a settlement) is to be accounted from the time of his delivery of a notice in writing, of the house of his abode, to one of the parish officers, and by section 3. of the 3 W. & M. c. 11. from the publication of such notice in the manner therein mentioned. It is clear, therefore, that in order to gain a settlement, it was necessary that a party should continue in a parish forty days after the giving and publication of the notice to the parish officers. But section 6. of the latter statute provides; "that if any person who shall come to inhabit in any parish shall be charged with and pay his share towards the public taxes of the parish, then he shall be adjudged and deemed to have a legal settlement in the same, though no such notice in writing be delivered and published as is hereby before required." By this clause, the legislature, therefore, evidently consider the being charged with and paying parochial taxes equivalent to the giving and publishing of the notice in writing required in other cases. As it was necessary, therefore, to reside forty days in a parish after the giving and publication of notice, it follows that, in order to gain a settlement by reason of having been charged with and paid parochial taxes, a party ought to reside forty days after he has been so charged with and paid such taxes; and if that be so, then on the 22nd day of *June* 1825 the pauper had not resided forty days after the making of the poor rate, and it does not appear that he resided forty days after payment of the church rate, for it is not stated when that rate was paid. It is not shewn, therefore, that he had gained any settlement by having been charged with and paid parochial taxes on the 22nd of *June* 1825; and the statute 6 G. 4. c. 57. has prevented

the gaining of a settlement after that period, unless the tenement has all the qualities there described, which in this case it had not.—**LITLEDAL, J.** The statute 3 & 4 W. & M. c. 11. s. 6. confers a settlement on any inhabitant who has been charged with and paid his share towards the parochial taxes. The settlement, however, is not acquired until the taxes are actually paid. Before that time the parish need not take any notice of the party. The payment of the taxes with which the party is charged is by the statute made equivalent to the notice otherwise required to be given to the parish officers. Now, as a person could not gain a settlement until he had continued forty days in the parish after such notice had been given and published, I think it follows as a necessary consequence, that no settlement could be gained by the pauper in this case until he had continued in the parish forty days after he had paid the taxes with which he was charged. It does not appear that he had paid any taxes on the 22nd of June 1825; consequently it is not shewn that at that time he had acquired any settlement, and the statute 6 G. 4. c. 57. prevented his gaining any settlement after that period. The order of sessions must be confirmed.—Order of sessions confirmed.

96. *Rex v. Kibworth Harcourt, H. T.*—8 & 9 G. 4.—7 B. & C. 790.—Two justices by their order removed *James Asker*, with his wife and their five children, from the township of *Kibworth Beauchamp*, to the township of *Kibworth Harcourt*, both in the county of *Leicester*. The sessions on appeal confirmed the order subject to the opinion of the Court of King's Bench, on the following case:—After proof of a *prima facie* settlement in the appellant township, it appeared that about Lady-day, 1825, the pauper took of our *Thomas Bradshaw*, a house and garden situated in the township of *Kibworth Beauchamp*, at the rent of 10*l.* for a year, to commence at the ensuing *Michaelmas*. The house and garden were then in the occupation of one *Cooper*, whose term in them expired at *Michaelmas*; but Mr. *Bradshaw* said he should expect Mr. *Cooper* to stand as tenant till *Michaelmas*, and should expect the rent when Mr. *Matthew Waterfield*, who was tenant of other lands to Mr. *Bradshaw*, paid his, and it should be all put in one receipt. The pauper was let into possession immediately by *Cooper*, and paid rent up to *Michaelmas* to him (*Cooper*), after which time he continued to occupy the premises, and paid rent, as after mentioned, until *Michaelmas* 1826. Early in the pauper's tenancy, *Matthew Waterfield*, then being churchwarden of the township of *Kibworth Beauchamp*, called upon the pauper, and represented to him that *Bradshaw* had let the pauper's premises, together with other lands, to himself (*Waterfield*) and that he (pauper) was thenceforward to pay the rent quarterly to him. At the same time *Waterfield* told the pauper that he should make a reduction in his rent of 8*s.* a year, to which reduction the pauper assented, and a rent of 9*l.* 12*s.* was accordingly paid by the pauper to *Waterfield*, in the course of that year, by four quarterly payments, as follows, viz. the first two payments to *Matthew Waterfield*, and the last two, after the death of *Matthew*, to *John Waterfield*, his brother and successor in the farm. At the end of the year the sum of 55*l.* was carried by *John Waterfield* to the landlord, *Bradshaw*, which sum included 10*l.*, the pauper's rent of the house and garden for the year first completed; and the residue was composed of the rent of the other land occupied by *Waterfield*. *Brad-*

Where a pauper *bond fide* hired a house and garden in *A.* for a year at the rent of 10*l.*, and occupied it for a year, and the whole rent was paid to the landlord, but not by the pauper: Held, that he nevertheless gained a settlement in *A.* inasmuch as the stat. 6 G. 4. c. 54. did not require that the rent should be paid by him.

shaw returned 5*l.* to *Waterfield*, and gave him one receipt for the rent. It further appeared, that *John Waterfield* was reimbursed out of the parish funds for the sum of 8*s.* paid by him to the landlord, over and above the 9*l.* 12*s.* received from the pauper. The court of quarter sessions found that there was fraud in this case on the part of the township of *Kibworth Beauchamp*, but that neither the landlord nor the pauper were privies to the fraud.—*BAYLEY J.* If the stat. 6 *G.* 4. c. 57. had required that the rent should be paid by the pauper, there would have been some difficulty in overcoming the fraud found by the sessions. But the requisites mentioned in that statute are, that the premises should be bona fide rented by the pauper at the sum of 10*l.* a year at the least, for the term of one whole year, and should be occupied under such yearly hiring, and the rent actually paid for one whole year at the least. It does not require that the rent should be paid by the tenant. Now the facts stated in the case shew that the premises were rented for one whole year, at the rent of 10*l.* and that that rent was actually paid for one whole year. I also think that the pauper occupied the premises for one whole year, under that hiring; for nothing that was done by *Waterfield* could have the effect of altering the original tenancy created between the pauper and the owner of the premises. The pauper remained tenant under the original taking, and the landlord might have distrained upon him for the rent of 10*l.* if it had been in arrear. I therefore think that a settlement was gained in *Kibworth Beauchamp*, and the orders of removal and confirmation must be quashed.—*HORROYD J.* concurred.—Both orders quashed.

Since the statute 6 *G.* 4. c. 57. in order to gain a settlement by settling upon a tenement, the reserved rent for one whole year (whatever be its amount) must be paid.

97. *Rex. v. Ashley Hay*, *E. T.* 9 *G.* 4.—8 *B. & C.* 27.—Upon appeal against an order of two justices for the removal of *J. Sneap*, his wife and children, from the township of *Ashley Hay*, in the county of *Derby*, to the township of *Mugginton*, in the same county; the sessions quashed the order, subject to the opinion of this Court on the following case:—At *Lady-day* 1825, the pauper, *J. Sneap*, being legally settled in *Mugginton*, hired a farm in *Ashley Hay* by the year, at the rent of 54*l.* per annum, payable half-yearly. He held and resided upon the said farm for more than twelve months, and he paid rent on account of the same to the amount of 40*l.*, but he did not pay a whole year's rent for the same prior to his becoming chargeable to and his being removed by *Ashley Hay* township. He was, prior to the 22d of *June* 1825, charged in respect of the farm in two assessments for the relief of the poor, and with the public taxes of *Ashley Hay* township, and applications were made to him for payment of such taxes prior to the the said 22d of *June* 1825, but he did not pay the same till after the 10th of *July* 1825.—*LORD TENTERDEN, C. J.* I entirely concur in the judgment delivered by the Court in *Rex v. Ramsgate*,^(a) and in the reasons upon which that judgment was founded. That case is expressly in point, and must govern our decision in the present. No settlement was gained in *Ashley Hay*, because one year's rent was not paid, and the order of sessions must therefore be quashed.—Order of sessions quashed.

98. *Rex v. Barham*, *E. T.* 9 *G.* 4.—8 *B. & C.* 99.—Upon an appeal against an order of two justices, whereby *Henry Welch*, his wife and children, were removed from the parish of *Barham*, in the county of *Kent*, to the parish of *St. Mary the Virgin, Dover*, in the

A pauper on the 6th of April 1823 hired a house for a year at the rent

(a) 6 *B. & C.* 712. *Ante*, pl. 94.

same county, the sessions quashed the order, subject to the opinion of this Court on the following case:—The pauper *Henry Whelch*, on the 6th of *April* 1823, hired a house of one *Redman* in the parish of *St. Mary the Virgin*, in *Dover*, by the year, of the yearly value and at the rent of 12*l.* per annum, payable monthly. In *January* 1824, the pauper, who was a butcher, became chargeable to the parish of *St. Mary the Virgin*, and was, together with his family, directed to be removed, by an order of two justices, from that parish to the parish of *Barham*. The pauper alone was removed, and *Pope*, one of the then overseers of the parish of *Barham*, received him, and gave him 2*s.* 6*d.*, and directed him to return to *Dover*. The pauper returned the same day to his house in *Dover*, and continued to occupy it, under the original contract, until *Michaelmas* 1824, when, in consequence of certain threats of *Mr. Hubbard*, an overseer of the poor of the parish of *St. Mary the Virgin*, *Dover*, to send him to gaol for coming back to *Dover*, he agreed with the landlord of the house to take it by the week at the rent of 5*s.* weekly. At *Michaelmas* 1824 the pauper owed some rent; and no final settlement of the rent took place till *July* 1825, when the landlord having put a distress into the house, the pauper paid the rent, and left the house, which he had occupied first under the yearly and then under the weekly hiring uninterruptedly since the 6th of *April* 1823. The pauper during this occupancy paid his rent on account as it suited him, partly in money and partly in meat, but had no regular settlement till he left the house. The parish of *Barham* did not appeal against the order of the justices, by virtue of which the pauper was removed in the month of *January* 1824, from the parish of *St. Mary the Virgin*, *Dover*, to parish of *Barham*. The court of quarter sessions were of opinion that the pauper had not gained a settlement in the parish of *St. Mary the Virgin*, *Dover*, by such an occupation of *Redman's* house.—Lord TENTERDEN C. J. now delivered the judgment of the Court; and after stating the facts of the case, proceeded as follows:—The question depends on the statute 59 *G. 3. c. 50.*, which enacts, “that no person shall acquire a settlement by or by reason of his or her dwelling for forty days in any tenement rented by such person, unless such tenement shall consist of a house or building being a separate and distinct dwelling-house or building *bonâ fide* hired by such person at and for the sum of 10*l.* a year at the least for the term of one whole year; nor unless such house or building shall be held, and such land occupied, and the rent for the same actually paid, for the term of one whole year at the least, by the person hiring the same.” The language of this enactment is very peculiar. No person is to acquire a settlement by reason of dwelling forty days in any tenement, unless such tenement shall consist of a house (as it does in the present case) *bonâ fide* hired by such person at the sum of 10*l.* a year for the term of one whole year, nor unless such house shall be held, and the rent for the same actually paid, for the term of one whole year at the least. It should seem, therefore, that if a pauper resides for forty days upon a tenement, and the other requisites of the act have been complied with, he gains a settlement. Now in this case the pauper resided in the house more than forty days both before and after the removal, and all that the act requires in other respects was complied with. The house was taken for a year,

of 12*l.* per annum in the parish of *A.* In *January* 1824 he became chargeable to that parish and was, by an order of justices, removed to the parish of *B.* There was no appeal against the order of removal. The pauper returned on the same day to his house in the parish of *A.*, and continued to occupy it until the expiration of the year for which he had hired it, and paid the rent for the year: Held, that as the pauper had hired and held the house for a year, and paid the rent for that period, all the requisites of the statute 59 *G. 3. c. 50.* had been complied with, and that he gained a settlement in the parish of *A.* by renting a tenement.

and held for upwards of that period, and the rent was actually paid for the term of one whole year. It has been contended that the effect of the order of removal was to prevent the gaining of any settlement unless all that the act requires has been complied with after that order was made. If the effect of the order of removal had been to compel the pauper to abandon his tenement, it would make a difference. But he was absent from his home not even a day and his family were never removed at all. It was admitted in the argument that *Rex v. Fillingley (a)* had decided that the removal did not put an end to the contract between the landlord and tenant; and, under all the circumstances, we think it safer to say that a settlement was gained in *Dover* under the 59 G. 3. c. 50. by the residence before and after the removal. It was insisted that the return of the pauper after the removal was an offence against the law; but since the 59 G. 3. c. 101. this may admit of considerable doubt. Before that act a person likely to become chargeable was removable, and if he returned after the removal, he returned in the same condition; but as that act renders a person irremovable, unless actually chargeable, he may, after his removal, return with the means of subsistence, and it is difficult to say that by so returning he commits an offence. Our decision may, perhaps, in this particular case, operate to defeat the object of the 59 G. 3.; but it is better to abide by this consequence than to put upon it a construction not warranted by the words of the act, in order to give effect to what we may suppose to have been the intention of the legislature. The order of sessions must, therefore, be quashed, and the original order of removal confirmed.—Order of sessions quashed.

By the 6 G. 4. c. 57., which repealed the 59 G. 3. c. 50., it is enacted, that no person shall acquire a settlement by reason of settling upon any tenement, unless it shall consist of a separate and distinct dwelling-house, or of land, or of both, bonâ fide rented by such person, at the sum of 10*l.* a year at the least, for the term of one whole year, nor unless such house or building, or land, shall be occupied under such yearly hiring: Held by

99. *Rex v. Ditcheat. H. T. 9 & 10. G. 4.—9 B. & C. 176.*—Upon an appeal against an order of two justices, whereby *Martha Jerrard*, the wife of *Thomas Jerrard*, then in *St. Thomas's* hospital in the borough of *Southwark*, in the county of *Surrey*, and their children, were removed from the parish of *Ditcheat*, in the county of *Somerset*, to the parish of *Lyncombe* and *Widcombe*, in the same county, the sessions quashed the order, subject to the opinion of this Court on the following case:—The pauper's husband rented a tenement in *Lyncombe* and *Widcombe* by the year, viz. from *Lady-day* 1825 until *Lady-day* 1826, at the yearly rent of 15*l.*, with liberty to quit at any time on giving a quarter's notice. After the first month's occupation, the pauper's husband left the pauper living in the tenement and went to *London*, and remained there about seven months, during which period she remained in the tenement, and until she quitted it as after mentioned; and she paid the year's rent, the receipts for which were given as if it had been received from her husband. A few days after the 25th of *March* 1825, the pauper's husband let an apartment in such tenement to one *Gay*, at the yearly rent of 8*l.*, payable quarterly, with liberty to quit at any time on giving a quarter's notice; and the same was occupied by *Gay* from the time of his taking until the 25th of *March* 1826, and his rent paid to that time. The pauper's husband gave notice at *Christmas* 1825, to quit at *Lady Day* 1826. The landlord permitted the pauper to occupy part of the tenement until *Midsummer* 1826, on paying him 38*s.* for the same; and the pauper quitted at

Midsummer 1826: the pauper's husband never paid any parochial rates although rated. — BAYLEY J. The statute 59 G. 3. c. 50. is repealed by the statute 6 G. 4. c. 57. The question, therefore, in this case is, Whether a settlement was or was not obtained under the last-mentioned statute? By the 59 G. 3. c. 50. a settlement could not be obtained in the case of a house or building unless such house or building were held, or in the case of land, unless it were occupied, and the rent for the same were actually paid, for the term of one whole year at the least *by the person hiring the same*. There was, therefore, a specific enactment that the house should be *held*, and the land occupied, and the rent paid, *by the person hiring the same*. The language of the 6 G. 4. c. 57. is different. The statute is wholly silent as to the occupation or payment of rent by the person hiring; and it has been decided in *Rex v. Kibworth Harcourt (a)* that, according to the true construction of the statute, the payment of rent need not be made by the party hiring. The words *by the person hiring the same* are to be considered, therefore, as struck out of the statute 6 G. 4. c. 57., and the law altered so far as it required that the rent should be paid by the person hiring the premises. It is now sufficient if it be paid either by the person hiring or by any other person. The words of the 6 G. 4. c. 57. s. 2. are that the house, or building, or land, shall be occupied *under such yearly hiring*, and the rent for the same, to the amount of 10*l.* shall be actually paid for the term of one whole year at the least. Here the phrase is varied. The statute says, not that the house or land shall be occupied *by the person hiring the same*, but only that it shall be occupied *under such yearly hiring*. And although it may be difficult to arrive with certainty at the meaning of the legislature, which is not expressed in very intelligible language, I incline to think the true construction of those words is, that it shall be occupied by the person to whom that hiring gives the right of occupation, and that occupation by any other person to whom that right is communicated, either by assigning or underletting, is not an occupation under the yearly hiring within the meaning of the statute. That is my present opinion. If between this time and to-morrow morning I should change that opinion, I will certainly communicate it to the Court. My learned brothers think that the words *under such yearly hiring* do not make occupation by the person hiring requisite, but that it is sufficient if either he himself or any other person under him occupy. I think that a party who occupies as an under-tenant, though he may be said in some sense to occupy under the yearly hiring, cannot be said to occupy under the yearly hiring within the meaning of this clause of the act of parliament; because though he does occupy in part under that yearly hiring, he does not in toto; he occupies under the yearly hiring, and something else. As to the other question, *viz.* whether the holding before the 22d of June, when the 6 G. 4. c. 57. was passed, and the holding subsequent to that period, can be connected, I am opinion they may, provided the occupation, before the 22d of June be such as will satisfy the requisites of the 6 G. 4. c. 57.; and, therefore, if a party before the 6 G. 4. c. 57. began to operate was in possession of a yearly tenement, and held it under such circumstances as that statute says shall be requisite in order to gain a settle-

Littledale and Parks Js., Bayley J. dissentiente, that under this statute, a pauper who rented a dwelling-house at the yearly value of 10*l.*, and resided in it, but underlet part, thereby gained a settlement.

(a) 7 B. & C. 790. Ante, pl. 96.

ment, a settlement will be conferred. There are no words in the 6 G. 4. c. 57. which import that the taking shall be subsequent to the time when that statute came into operation. With respect to the residence for forty days, I think the case ought to go down to the sessions again, in order that it may be stated more distinctly what the nature of the residence was, or whether the whole forty days' residence required was actually by the husband himself. The cause of the husband's absence, whether it arose from his own free will, or from compulsion, or from other circumstances, may possibly be material. In *Rez v. St. George, Southwark* (a), the husband was incapacitated by law from residing in his own house; for he was in prison during the whole of the time, and had not the power of residing on his own property for forty days.—LITLEDALE J. The principal difficulty in this case arises upon the construction of the word "occupied" in the statute 6 G. 4. c. 57. There is a material difference between a holding and an occupation. A person may hold though he does not occupy. A tenant of a freehold is a person who holds of another: he does not necessarily occupy. In order to occupy, a party must be personally resident by himself or his family. In this case it seems to me, that the pauper has been the occupier of the house during the whole period. We have no distinct account how the apartment was let or occupied. In an indictment for housebreaking, it might be laid to be the house of the pauper's husband. So in an action for use and occupation, he might properly be described not merely as holding, but as occupying the house. In the statute 11 G. 2. c. 19. s. 14., which gives the action for use and occupation, where the agreement is not by deed, a distinction is made between the words held and occupied. That section enacts, "that it shall be lawful for the landlord, where the agreement is not by deed, to recover a reasonable satisfaction for the lands, &c. held or occupied by the defendant, in an action on the case for use and occupation of what was so held or enjoyed." By the statute of the 43rd of *Elizabeth*, the rate for the relief of the poor is to be on the occupier. The rate in this case must clearly have been made on the pauper's husband for the whole house, though he underlet part. In *Nolan's Poor Laws*, 176. (a), it is laid down that no lodger, though possessing the principal part of the house, was ever rated; but the owner, how small soever the part reserved for himself, is in the eye of the law the tenant for the whole, and is rated as the occupier. Then, as in an indictment for housebreaking (committed in the apartment let to *Gay*), the house might be described as the dwelling-house of the pauper's husband; and as he might be described as the occupier of the house, in an action for use and occupation, and would be rateable to the poor as occupier in respect of the whole house, I think he must be considered, in point of law, as having occupied and resided in this house. It is not necessary, in order to make a man an occupier, that he should actually sleep or take his meals in a house, or that his family should actually dwell in the whole house; but the law considers him, for this purpose, an occupier if he hold the whole, and by himself or his family occupy part. I think, therefore, the pauper's husband may be considered to have occupied the house within the meaning of the 6 G. 4. c. 57. It might have been otherwise if he had underlet the whole house, and occupied no part.

(a) 7 T. R. 466.

(b) 4th edit.

The word occupation, as applied to a house, undoubtedly implies personal residence. But if a lessee of a house dwell in any part of it, though he let the other part, he, in point of law, is to be considered as the occupier of the whole. If that be the true construction of the word "occupied," the pauper's husband occupied the house; and then the only question is, Whether there has been forty days' residence by the pauper's husband? and upon that point there is some doubt. That certainly is essential; for the legislature did not intend by the 6 G. 4. c. 57. to alter the law in that respect. Upon the finding in this case, I rather collect that the pauper's husband had abandoned his wife, and gone to pursue his own course of living in some other place. If he had merely gone away for the purpose of business, with the intention of returning, the residence would be there still, though he was temporarily absent. I agree with my Brother *Bayley*, that the case ought to be sent back to the sessions, in order to have the fact ascertained.—PARKER J. I have entertained considerable doubt in this case; but I am inclined to think that a settlement was gained in the parish of *Lynchcombe* and *Widdicombe*. The question turns entirely on the 6 G. 4. c. 57. My judgment may have the effect of defeating the intention of the framer of that act. But it is a very safe rule of construction to adhere to the words of an act of parliament in their grammatical and natural sense, unless it appears clearly from the context that they were intended to be used some other sense. There is a material difference between the stat. 6 G. 4. c. 57. and the stat. 59 G. 3. c. 50. The last-mentioned statute expressly requires the building to be held, and the land to be occupied, and the rent to be paid, by the person hiring the same. The statute 6 G. 4. c. 57. omits the words "by the person hiring the same." It does not require the payment of rent or occupation *by the person hiring the same*, but occupation *under the yearly hiring*. These words may be satisfied by the continuance of the term and occupation by a sub-tenant or assignee during the continuance of that term. It is not necessary to decide in this case whether occupation by an assignee would be sufficient or not. Here there was an occupation by a person whose character is left doubtful. It does not appear by the case whether it was that of a sub-tenant, having an entire occupation of one part of the building, or that of a lodger. It seems to me there was an occupation by the husband of the pauper under the yearly hiring, provided the premises continued in the occupation of any person entitled under the tenancy created by the yearly hiring. I think we ought to give effect to the words of the act of parliament in their plain, natural sense, unless we see clearly from the context that the intention of the legislature was different; but I find nothing in the context to shew that that which those words taken in that sense import was not their intention. I must suppose that the legislature when they repealed the 59 G. 3. c. 50., which expressly required an occupation by the person hiring, had some reason for omitting those words in the 6 G. 4. c. 57. Possibly that omission may have arisen from inattention on the part of the framer of the act, and it may have been intended to require occupation by the person who took the term. But it seems to me that the words used do not expressly require such occupation, and we must not presume the intention of the legislature, but collect it from the words of the act of parliament. Then if the meaning of the legislature be

that which the words used naturally import, a settlement has been gained, provided there has been a residence of forty days. As to that the case is ambiguous. I think it ought to be referred again to the sessions for the purpose of having the fact stated one way or the other. If it be found that there was no residence by the husband for forty days, then no settlement will be gained.—Case sent back to the sessions.

After the passing of the 59 G. 3. c. 50. and before the statute 6 G. 4. c. 57. came into operation, a pauper bonâ fide hired a tenement at and for the sum of 10*l.* a year, and held and occupied and paid rent for the same for the term of one whole year, but the actual annual value of the same was less than 10*l.*: Held, that he thereby gained a settlement, the actual value of the tenement being immaterial, provided it be bonâ fide hired for the sum of 10*l.* a year.

By the 6 G. 4. c. 57., which repealed the 59 G. 3. c. 50., it is enacted, that no person shall acquire a settlement by reason of settling upon any tenement, unless it shall consist of a separate and distinct dwelling-house or building, or of land, or of both, bonâ fide rented by such person at the sum of 10*l.*

100. *Rex v. Ashfield-cum-Thorpe*, T. T. 10 G. 4.—9 B. & C. 939.—Upon appeal against an order of two justices, whereby W. M. Miller and his wife and children were removed from *Snape* to *Ashfield-cum-Thorpe*, both in the county of *Suffolk*, the sessions confirmed the order, subject to the opinion of this court on the following case:—The pauper, who was previously a settled inhabitant of *Ashfield-cum-Thorpe* (after the passing of the 59 G. 3. c. 50. and before that of the 6 G. 4. c. 57.), bonâ fide hired a house and land for one whole year in the parish of *Snape*, at a rent exceeding 10*l.*, and held, occupied, and paid that rent for more than one year; though at the time the value of the holding and occupation was under 10*l.* a year.—BAYLEY J. The statute 59 G. 3. c. 50. requires that the tenement be bonâ fide hired at and for the sum of 10*l.* a year. It seems to me that by that statute the actual value is immaterial, provided the tenement be bonâ fide hired at the specified rent. The provision "that it shall not be necessary to prove actual value of the tenement," was introduced into the 6 G. 4. c. 57. for greater caution.—LITLEDAL J. concurred.—PARKE J. One fertile source of those disputes and controversies (mentioned in the recital of the 59 G. 3. c. 50.) was the necessity of proving the value of the tenement; and that statute, in order to prevent litigation, requires that the tenement shall be bonâ fide hired at the sum of 10*l.* a year. Generally speaking, the rent agreed upon between the landlord and tenant is the best criterion of value, and I think the legislature meant to dispense with any other proof of value. If the tenement hired turns out to be of much less annual value than 10*l.*, that would be evidence to shew that it was not bonâ fide hired at that sum. But if it be bonâ fide hired at that sum, I think that is sufficient. That being so, the pauper gained a settlement in *Snape*.—Order of sessions quashed.

101. *Rex v. Great Bentley*, H. T. 10 & 11 G. 4.—10 B. & C. 520.—Upon appeal against an order of two justices, whereby J. Peeling, his wife and children, were removed from *Little Clacton* to *Great Bentley*, both in the county of *Essex*, the sessions confirmed the order, subject to the opinion of this Court on the following case:—J. Peeling, the pauper, hired a tenement, consisting of a separate and distinct dwelling house, and a pasture field of two acres, in the respondent parish of *Little Clacton*, the hiring to commence on December 25th, 1826. He engaged to pay for this tenement the rent of 13*l.* 10*s.* a year, for the term of two years; but in the latter part of *March*, or the beginning of *April* 1827, the pauper sold the grass in the field, from that time till *New Michaelmas*, to John Townsend, for ten guineas, to be mowed or fed by him as he pleased, and during that time he discontinued to turn his donkey and cow into the field as he had before done, as he did not consider that he could feed the grass after he had sold it to Townsend; and having a quantity of clover, which he wished to stack in the field, he asked Townsend's leave to stack it there; and having obtained that leave, abated

one shilling from a claim he had upon *Townsend*, for labour which he had performed for him, and which *Townsend* accepted as an acknowledgment for the damage done to the grass by the stack. The pauper sold the grass to *Townsend* in the same way in the second year, though with some variation in the price. The court of quarter sessions held, that during the operation of the pauper's agreements with *Townsend* he did not occupy the field under his yearly hiring, in the manner required by the 6 G. 4. c. 57., and, therefore, that he had not gained a settlement by the hiring of this tenement.—Lord TENNERDEN, C. J. The question in this case turned on the tenement act, 6 G. 4. c. 57. Upon consideration, we are all of opinion, that all that was required to be done by that act has been done in this case, and, consequently, that the pauper gained a settlement by renting the tenement in question. That statute enacts, that “no person shall acquire a settlement in any parish or township by, or by reason of settling upon, renting, or paying parochial rates for any tenement, not being his or her own property, unless such tenement shall consist of a separate and distinct dwelling-house or building, or of land, or of both, bonâ fide rented by such person in such parish or township, at and for the sum of 10*l.* a year, at the least, for the term of one whole year.” Here the tenement consisted of a separate and distinct dwelling-house and land; it was, bonâ fide, rented by the pauper in the parish, and at and for a rent exceeding, 10*l.* per annum for one whole year. But then the statute continues, “nor unless such house or building, or land, shall be occupied *under such yearly hiring*, and the rent for the same to the amount of 10*l.* actually paid for the term of one whole year at the least.” The rent for the term of one whole year has been actually paid. The only question is, whether there was an occupation of the whole of the premises hired *under the yearly hiring*? It was objected, that the pauper did not occupy the whole of the premises hired under the yearly hiring; that he let off the land, and that this clause of the act of parliament, therefore, was not satisfied. There is a difference between the language of the statute 6 G. 4. c. 57. s. 2., and that of the 59 G. 3. c. 50. The last mentioned statute required that the house should be held, and the land occupied, *by the person hiring the same*; but those words, “by the person hiring the same,” are omitted in the 6 G. 4. c. 57. The legislature, when they passed that statute, must have had in their mind the very act (59 G. 3. c. 50.) which they were repealing. We cannot, therefore, but consider that those words were left out by design. Then the whole question is, whether the whole of the premises were occupied under the yearly hiring? It is clear that they were. That being so, every condition that was required by the terms of the act of parliament has been complied with, and the pauper has gained a settlement. We think it much the safer course to adhere to the words of the statute construed in their ordinary import, than to enter into any enquiry as to the supposed intention of the persons who framed it. The order of sessions must therefore be quashed.

a year at the least, for the term of one whole year; nor unless such house or building, or land, shall be occupied *under such yearly hiring*, and the rent for the same to the amount of 10*l.* actually paid for the term of one whole year at the least, &c.: Held, per totam curiam, that under that statute a pauper who rented for a year a dwelling-house and land at a rent exceeding 10*l.* per annum, which was actually paid, but who underlet the land, gained a settlement.

102. *Rex v Merthyr Tidal*, 11 G. 4. & 1 W. 4.—1. B. & Ad. 29. —On appeal against an order of justices for the removal of *Evan Davies* and his family, the quarter sessions confirmed the order, subject to the opinion of this court upon a case, the material parts of which are as follows:—*Evan Davies*, his wife and children, were removed from *Cadoxton Juxta Barry* to *Merthyr Tidal* in the county

By 6 G. 4. c. 57. s. 2. a settlement by renting a tenement can only be acquired where the same

has been bonâ fide rented for a year at 10*l.* a year; Held, that such a renting can only appear by reference to the agreement with the landlord, and could not therefore be proved by parol, where the contract was in writing, and might have been produced.

of *Glamorgan*. The order being appealed against at the last *Midsummer* sessions for *Glamorganshire*, *Evan Davies*, the pauper, was called as a witness by the respondents, and deposed, that he rented and held possession of a house in *Merthyr Tydvil*, from *May* 1827 to *June* 1821. The rent was 35*l.* per annum, payable quarterly. He paid the first three quarters as they became due, and had a receipt for the last, which was not paid in money, but for which, as he alleged, the landlord accepted an equivalent in fixtures. On cross-examination, he at first stated, that the contract between him and *Rock*, the landlord, for the premises, was merely verbal; but *Rock*, who was in court, handed the agreement in writing to the advocate for the appellants, and the witness, on this paper being held up to him, admitted that the contract was a written one. It was then contended on behalf of the appellants, that parol evidence of the agreement could not be received, the written document being in existence, and not produced, or the want of it excused, by the respondents; but the sessions over-ruled this objection. The appellants then called *Rock*, whose evidence tended to shew that the transaction respecting fixtures was not a proper satisfaction of the last quarter's rent, and that the receipt was unfairly obtained. On the order being confirmed, two questions were reserved for the opinion of the Court of King's Bench; first, Whether the parol testimony of *Davies* was properly received; secondly, Whether the payment of rent was sufficient under the statute 6 *G. 4. c. 57.*—*BAYLEY J.* This case is clearly distinguishable from *Rex v. The Inhabitants of Holy Trinity*, the facts of which took place before the passing of the statutes 59 *G. 3. c. 50.* and 6 *G. 4. c. 57.* and when the proofs necessary for establishing this kind of settlement were, that a tenancy subsisted, and that the value of the tenement was 10*l.* a year. At that time the terms of the agreement were immaterial except as a test of value, and, when proved, they did not preclude the sessions from determining for or against the settlement. *Rex v. The Inhabitants of Holy Trinity* decided this only, that where the terms of the tenancy were not material, the fact of tenancy might be proved without the terms. But under 6 *G. 4. c. 57.* they are essential, for this act requires the tenement to be bonâ fide rented for the term of a year at 10*l.* a year; and it is therefore necessary to know what was the rent contracted for, which cannot be proved without reference to the agreement itself. That having been in writing, the general rule of evidence prevails, and the order is therefore bad.—*LITLEDAL J.* and *PARKE J.* concurred.—Order of sessions quashed.

Where upon the trial of an appeal the question was, whether the pauper had gained a settlement by renting a tenement in parish *A.*, and it appeared that he being then settled in parish *B.*, had applied to the officers of the latter

103. *Rex v. Tillingham, T. T. 11 G. 4. & 1 W. 4.—1 B. & Ad. 180.*—Upon appeal against an order of two justices, whereby *J. Spells* and his wife and children were removed from *Bradwell* to *Tillingham*, the sessions confirmed the order, subject to the opinion of this Court on the following case:—About *Michaelmas* 1827, the pauper, who it was admitted was before legally settled in *Tillingham*, hired a house, garden, and bakehouse, situate in *Bradwell*, of *Mr. John Willis*, under the following agreement:—" *Mr. Jonathan Spells* agrees to "take the house and shop, late in the occupation of *John Stoker*, "situate in the parish of *Bradwell, Essex*, at the yearly rent of 10*l.* "for the first two years, to commence at *Christmas* 1827, clear of "all rates and taxes, landlord's excepted: half-yearly payments. "*Jonathan Spells.*" The pauper took possession of the premises

at *Christmas* 1827, and occupied them a whole year. He also paid a year's rent for them under the following circumstances. Soon after *Midsummer* 1828, Mr. Willis applied to the pauper for a half-year's rent then due, which he was unable to pay. Shortly after *Michaelmas* 1828, a similar application was made for three quarters of a year's rent then due, but no money was paid. The pauper, being then distressed, his business of a baker failing, and his family in want, applied to Mr. Stowers, one of the overseers of *Tillingham*, for relief; and also for a sum of money to enable him to pay his half-year's rent and to carry on his business. Mr. Stowers gave the pauper 1*l.* for relief, and directed him to call again two or three days afterwards. The pauper did call again accordingly, when he received from Mr. Stowers the sum of 12*l.* 10*s.*, 7*l.* 10*s.* of which he paid to his landlord for the three quarters of a year's rent due at *Michaelmas*, and the remaining 5*l.* he applied in carrying on his business and supporting his family. Shortly after *Christmas* 1828, Mr. Robert Willis, one of the overseers of *Tillingham* (but not the acting one), who was nephew of the proprietor of the house in which the pauper resided, and acted as agent to his uncle, applied to the pauper for one quarter of a year's rent then due. The pauper said he was unable to pay it, and that he must apply to Mr. Stowers for relief for himself and his family. Mr. Willis said, that if the rent was not paid the next day he should put in a distress, to which the pauper replied, he did not consider there was any rent due until the following *Michaelmas* 1829. The pauper afterwards again applied to Mr. Stowers for relief; Mr. Willis was present, and asked the pauper if he would object to pay the rent if he had the money in his pocket: to which the pauper replied, No; but repeated that he did not consider there was any rent due. Mr. Stowers then desired the pauper to withdraw for a few minutes, that he and Mr. Willis might consult upon the business. The pauper did withdraw accordingly, and in a few minutes was called in again, when Mr. Stowers gave him 3*l.* Mr. Willis then demanded of the pauper payment of the one quarter's rent, and the pauper accordingly paid him 2*l.* 10*s.*, reserving only the remaining 10*s.* for himself; as he was going away, the pauper asked Mr. Stowers where he was to apply for relief when the 10*s.* were gone, saying that he supposed, as he had paid a year's rent for his house, he was in future to apply to the parish of *Bradwell*; to which Mr. Stowers replied, that he was. Previously to his advancing the sums of 7*l.* 10*s.* and 3*l.* to the pauper, Mr. Stowers consulted the other parish officers of *Tillingham* upon the propriety of making such advances; and both those advances were made with their knowledge and approbation. He also took the opinion of two magistrates of the district upon a supposed case, and was advised by them that he might safely and properly make such advances, and that his so doing would not prejudice the pauper's right to acquire a settlement in *Bradwell*. The sessions did not assign fraud as the ground for determining that no settlement had been acquired in *Bradwell*, but stated that, as the facts of the case were novel, they were desirous of having the opinion of the Court of King's Bench, whether the payment of rent under such circumstances was a legal payment.—BAYLEY J. It is not for this Court to draw the conclusion of fraud from the facts stated. It was a question for the justices at sessions, whether there was fraud or not. If the money was paid by the overseer

parish for relief, and they gave him a sum of money, which enabled him to pay his landlord a year's rent for the tenement in parish A., whereby (if that payment were not fraudulently made by the parish officers of B. to enable him to acquire a settlement in A.) he would become settled in the latter parish, it is a question of fact for the sessions whether that payment was fraudulent or not; and if the justices at sessions are of opinion upon the evidence that the money was paid solely to enable the pauper to gain a settlement in parish A. they ought to find fraud; but if, on the other hand, they are of opinion that the money was paid for the purpose of relieving him, they ought to negative fraud.

to the pauper when he was actually under pressure, as for the purpose of relief, that would be no fraud; but if it was paid not with a view to relief, but only to get rid of the pauper, and to throw the burden of maintaining him on another parish, that would be fraudulent. I think that this case should go back to the sessions, in order that they may state that there was fraud, or that there was none. If, upon this evidence, they shall be of opinion that the money, or any considerable portion of it, was paid by the overseer for the sole purpose of fixing the pauper on one parish and enabling the other to get rid of him, they ought to find fraud; but if they shall be of opinion that the money was paid *bonâ fide*, with the sole view of relieving the pauper, they ought to negative fraud.—Case sent back to the sessions.

The hiring of a house at 10*l.* a year, the landlord paying all levies and rates chargeable on the house, is a sufficient hiring and renting of a tenement at and for the sum of 10*l.* a year at the least within the meaning of the statutes 59 G. 3. c. 50., and 6 G. 4. c. 57.

104. *Rex v. Thurmaston*, H. T. 1 W. 4.—1 B. & Ad. 731.—On appeal against an order of two justices, whereby *John Simpson* and his wife and children were removed from the parish or township of *Thurmaston South End*, in the county of *Leicester*, to the parish or township of *St. Margaret in Leicester*, also in the said county, the sessions discharged the order, subject to the opinion of this Court on the following case:—At *Michaelmas* 1324, the pauper *John Simpson* took a house for one year in the parish of *St. Margaret, Leicester*, of one *Thomas Mawley*, at the annual rent of 10*l.*, the said *T. Mawley* agreeing to pay all levies and rates chargeable upon the said house; and under this agreement the pauper occupied the house for the full term of one year, and paid the sum of 10*l.* by four quarterly payments. The question submitted by the court of quarter sessions was, whether the payment of the levies and rates by the landlord of the house would defeat the settlement of *John Simpson* in the appellant parish of *St. Margaret*.—Lord TENLERDEN C. J. Where the intention and the object of the legislature are doubtful, it is a safe rule of construction to be guided by the words of the act of parliament, taking them in their plain ordinary sense. The statute 59 G. 3. c. 50. requires that the tenement shall be *bonâ fide* hired at and for the sum of 10*l.* a year at the least, for the term of one whole year, and that the rent for the same be actually paid. Here, the house was *bonâ fide* hired at the sum of 10*l.*, and the rent has been actually paid for the term of one whole year. If it had been the intention of the legislature, that the rent to be paid to the landlord should be 10*l.* exclusively of all tenant's taxes, they would have said so in express terms. Perhaps the matter did not occur to the framers of the act; and if not, we cannot introduce such a provision. If it did occur to them, then the legislature must be considered as having intentionally omitted that provision. The cases put, of collateral benefit wholly unconnected with the occupation of the tenement, are not in point. In those instances, if they occurred, there might be ground for saying that the house was not *bonâ fide* rented at 10*l.* a year. But here, the benefit conferred on the tenant was in its nature connected with the occupation. We cannot say that he has not, *bonâ fide*, paid 10*l.* rent.—LITLEDALE J. This case appears to me to fall within the express words of the 59 G. 3. c. 50. and the 6 G. 4. c. 57. The tenement was *bonâ fide* hired at and for the sum of 10*l.* a year, and the rent for the same actually paid for the term of one whole year. If the legislature had intended to make a distinction between cases where the landlord paid the rates and taxes, and where he did not, they would have introduced an express provision for that purpose.

Their attention must in all probability have been called to it by the decisions in *Rex v. Framlingham* (a), and *Rex v. St. Paul's, Deptford* (b). In those cases it was considered that the "yearly value of 10l.," mentioned in the 13 & 14 Car. 2. and 9 & 10 W. 3., might be calculated without deducting the rates and charges usually deemed tenant's taxes. The legislature, by not altering the law established by those decisions, have adopted it. Here the word rent must be taken, in its ordinary sense, to import not what the landlord put in his pocket, but the sum paid by the tenant for the use of the premises. The payment of the taxes by the landlord was a collateral term introduced by agreement. I think, therefore, the house was hired at and for the sum of 10l. a year at the least within the meaning of the 59 G. 3. c. 50., and that the rent for the same has been paid; and, therefore, that the pauper gained a settlement in the parish of *St. Margaret, Leicester*.—TAUNTON J. I am of the same opinion. A general principle may be considered as established by *Rex v. Framlingham* and *Rex v. St. Paul's, Deptford*, with reference to all cases where tenant's taxes are paid by the landlord; viz. that if the sum paid to him by the tenant be 10l., it will be a sufficient yearly value of 10l. to gain a settlement. That being so, does the statute 59 G. 3. c. 50. revoke those decisions, and give any new rule on the subject? I find nothing of that sort. The statute merely requires, in addition to the hiring of a tenement at and for the sum of 10l. a year, that the rent shall be paid. The taxes here are collateral to the rent. As the decisions just mentioned were well known long before the statute 59 G. 3. c. 50. passed, it may be presumed that if the legislature had intended to alter the law in this respect, they would have used the words "at and for the sum of 10l. per annum, clear of all taxes, parliamentary and otherwise, and all other outgoings." In *Rex v. St. Paul's, Deptford*, the Judges, who expressed some doubts, still felt themselves bound by the authority of *Rex v. Framlingham*; and if so, à fortiori, we are bound by the two cases.—Order of sessions quashed.

105. *Rex v. St. Sepulchre, Cambridge*, H. T. 1 W. 4.—1 B. & Ad. 924.—On appeal against an order of two justices, whereby *Thos. Kisby*, his wife and daughter were removed from the parish of the *Holy Trinity*, to the parish of *St. Sepulchre*, both in *Cambridge*, the sessions confirmed the order, subject to the opinion of this Court on the following case:—About *Michaelmas* 1827, the pauper, who was before settled in *St. Sepulchre*, hired of one *Sophia Bones*, a house situate in the parish of *St. Andrew-the-Great*, in *Cambridge*, at the rent of 10l. per annum, payable quarterly. He entered upon it at *Michaelmas* 1827, and occupied it till *Christmas* 1828. His wife paid the first quarter's rent, at *Christmas*, 1827; the next soon after *Lady-day* 1828, and 2l. towards the next a little after *Midsummer*, 1828; but no more was ever paid by her or the pauper. The pauper, about the time he gave up the house, (*Christmas* 1828) went to the parish officers of *St. Sepulchre*, and asked one of the overseers for a little assistance, as he was rent-run; but the overseer gave him nothing then, stating that he was only just come into office, but he would see the other officers. The pauper went a second time to the

A pauper, being previously settled in the parish of *S.* hired a house in the parish of *A.* for a year at the rent of 10l. payable quarterly, and paid the first two quarters' rent, and part of the third; and having occupied the house for more than a year, applied for relief to the parish officers of *S.* who paid the residue of the

(a) 6 Burr. S. C. 748. 2 Bott. pl. 201. (b) 13 East, 320. 2 Bott. pl. 108.

year's rent. The sessions having found that this payment was fraudulent, and made with an intention of settling the pauper in the parish of *A.*, held that no settlement was gained in that parish, though the hiring of the house was bona fide.

A tenement consisting of a dwelling-house and thirty-two acres of land was, since the 6 *G. 4. c. 57.*, hired and occupied for a year, at an annual rent of 20*l.*, and a year's rent paid. Twenty-seven acres of the land were situate in the township of *N.*, and five acres within that of *P.*: Held, that evidence was admissible, to shew how much of the entire annual rent of 20*l.* was paid in respect of the land in *N.*

same overseer, when he said "something must be done." It further appeared, that the overseer did not know when the pauper applied for relief, that his rent was 10*l.* a year, but the landlady having applied afterwards for the rent, he then knew the amount, and that the pauper lived out of the parish; it did not, however, appear, that at that time the overseer knew that the pauper had inhabited the house a year. The parish officers met, and determined to pay the remainder of the pauper's rent; and the amount (5*l.* 10*s.*) was paid by the same overseer to Miss *Bones*. The sessions found that the payment of the 5*l.* 10*s.* was fraudulent, with an intention of settling the pauper in *St. Andrew-the-Great*.—*Per curiam*. The sessions having found that the 5*l.* 10*s.* was fraudulently paid, no settlement was gained. It cannot be the meaning of the statute that the hiring or renting must be bona fide, but that the payment of the rent may be mala fide.—Order of sessions confirmed.

106. *Rex v. Pickering*, *E. T. 1 W. 4.*—2 *B. & Ad.* 267.—Upon an appeal against an order of two justices, whereby *John Todd*, his wife and child, were removed from the township of *Pickering*, in the North Riding of *Yorkshire*, to the township of *Newton* in the same riding, the sessions quashed the order, subject to the opinion of the Court on the following case:—Prior to the 6th of *April* 1826, *John Todd* took of *Hugh Kirby* a dwelling-house and thirty-two acres of land, at the annual rent of 20*l.*, to be holden from the — of *April* 1826 for one year then next ensuing. The dwelling-house and twenty-seven acres of land were situate within the township of *Newton*, and the remaining five acres within that of *Pickering*. At the period specified, he entered under such yearly hiring, and occupied the whole of the said premises for the said term of a year, and at its expiration paid the said reserved rent of 20*l.*, residing during the whole of such time in the said dwelling-house. It was objected by the counsel for the appellants, that there was no evidence of the tenement within the township of *Newton* being of the yearly value of 10*l.* Whereupon the counsel for the respondents offered to prove, that the proportion of the rent payable in respect of the dwelling-house and land in *Newton* was more than 10*l.* in amount, either by shewing the land within *Pickering* to be of less value than 10*l.* a year, or by shewing the dwelling-house and land within *Newton* to be of greater annual value than 10*l.* But the sessions refused to admit such evidence. It was also stated, by the counsel for the appellants, that he was prepared to shew that the land within the township of *Newton* was of no greater annual value than 6*l.* 5*s.* 3*d.* Lord TENTERDEN C. J. after stating the facts, proceeded as follows:—It was contended that no evidence of the value of the tenement could be received. The words of the statute 6 *G. 4. c. 57.* are undoubtedly very strong. The preamble recites, that the settlement of the poor had been made in some instances to depend upon the annual value of tenements which they may have rented, or upon the annual value of tenements in virtue of which they have paid parochial rates, and that the ascertaining such value in such respective cases had given rise to very expensive litigation, and that doubts had been entertained whether the 59 *G. 3. c. 50.* had been effectual for the purpose of altering the law in respect of proving the annual value of tenements so rented." Then section 2. enacts, "that no person shall acquire a settlement by rea-

son of settling upon, renting, or paying parochial rates for any tenement, unless it shall consist of a separate and distinct dwelling-house or building, or of land or of both, *bonâ fide* rented by such person at and for the sum of 10*l.* a year at the least for the term of one whole year, nor unless such house, or building, or land, shall be occupied under such yearly hiring, and the rent for the same to the amount of 10*l.* actually paid for the term of one whole year at the least." Then comes the proviso that it shall not be necessary to prove the actual value of such tenement. Now it is said that as evidence of the entire value of the tenement as contradistinguished from the rent was not admissible, and no distinction is taken between cases where the whole tenement is situate in one parish and where it is situated in several, the evidence ought not to have been received in this case; and, consequently that no settlement was gained in the parish of *Newton*. The effect of that would be, if the argument were to prevail, that if a party rented land in two parishes, for which he paid an annual rent of 300*l.* or 400*l.* and one acre was in one parish and the residue in the other, he would not gain a settlement in either parish. We think the legislature never could have so intended. The rent stipulated to be paid must be taken, for the purposes of this case, as the criterion of the value of the entire premises; but evidence was admissible to shew that the rent payable in respect of the land in the township of *Newton* amounted to 10*l.*; that is, supposing the house and all the land to be of the value of 20*l.* it was a question for the sessions, to consider how much of that sum was paid in respect of the land in *Newton*. The amount must depend upon the relative quantity and quality of the land in each parish. The case must go back to the sessions, in order that they, taking the entire value of the tenement to be 20*l.* (the annual rent,) may ascertain by evidence how much of that sum was paid in respect of the dwelling-house and land in *Newton*.—Case sent back to the sessions.

107. *Rex v. Dursley*, *E. T. 2 W. 4.*—3 *B. & Ad.* 465.—Upon an appeal against an order of two justices, dated the 24th of December 1830, whereby *Thomas Merritt*, his wife, and six children, were removed from the parish of *St. George, Hanover Square*, to the parish of *Dursley* in the county of *Gloucester*, the sessions confirmed the order, subject to the opinion of this court on the following case:—In March 1829 the pauper (being then settled in the parish of *Dursley*) took a house in the parish of *St. George, Hanover Square*, at a yearly rent of 36*l.* He resided in and occupied that house from Lady-day 1829 until August 1830, and paid during such occupation several sums on account of rent, amounting in the whole to 29*l.* The question for the opinion of this Court was, whether the statute 1 *W. 4. c. 18. s. 2.* which passed on the 30th of March 1831, applied to this case so as to enable the pauper to obtain a settlement in *St. George, Hanover Square*, by such renting, occupation and payment. If it did apply to this case, the order of sessions was to be quashed; if otherwise, to be confirmed.—Lord TENTERDEN C. J. I think we must understand the second section to be retrospective, because it would be useless unless it were so. The words that "payment to the amount of 10*l.* shall be deemed sufficient for the purpose of gaining a settlement under the said recited act" import that, as to the payment of rent, the statute is declaratory. If the words had been "it is hereby declared that payment, &c. shall be deemed sufficient," there could have been no doubt that

The second section of the statute 1 *W. 4. c. 18.*, by which it is provided, "that where the yearly rent shall exceed 10*l.*, payment to the amount of 10*l.* shall be deemed sufficient for the purpose of gaining a settlement under the recited act" (6 *G. 4. c. 57.*) is retrospective, and, therefore, where a pauper in 1829 hired a house at a yearly rent exceeding 10*l.*, occupied it for more than a year, and paid not a whole year's rent but

above 10*l.*, it was held, that he thereby gained a settlement.

the clause would be retrospective. Here the words are the same in effect.—LITLEDALE J. The act is not very clearly expressed; but taking the words in the first section, “the rent for the same to the amount of 10*l.* at the least,” to be descriptive of the amount of rent to be actually paid, which I suppose is meant, then the effect of the first section is, that “after the passing of the act no settlement shall be gained unless rent to the amount of 10*l.* be paid;” and if that be so, then, unless the second section be retrospective, it adds nothing to the former.—PARKE J. This act is to “*explain*” the former. Sect. 1. provides for settlements by renting for the future. Sect. 2., therefore, unless it be retrospective, is without object.—PATTESON J. concurred. Order of sessions quashed.

Of the Time for which the Tenement must be holden. 2 Bott, pl. 218.

In December 1825 a house was hired at twenty guineas a year, the rent to be paid weekly, and either landlord or tenant to be at liberty to determine the tenancy at three months’ notice from any quarter-day: Held, that this was a renting of a tenement for one whole year, within the meaning of the stat. 6 G. 4. c. 57., and that the pauper, having occupied the same, and paid the rent for a year, gained a settlement.

108. *Rex v. Herstmonceaux*, M. T. 8 G. 4.—7 B. & C. 551.—Upon appeal against an order of two justices, whereby *J. Start*, his wife, and children, were removed from the parish of *All Saints, Hastings*, in the county of *Sussex*, to the parish of *Herstmonceaux*, in the same county; the sessions quashed the order as to the eldest daughter, she being illegitimate, and confirmed it as to the other paupers, subject to the opinion of this Court on the following case:—On the 26th December 1825, the pauper, *J. Start*, being then settled at *Herstmonceaux*, agreed with *John Foster* to take a house in the parish of *All Saints, Hastings*, at twenty guineas a year; the rent to be paid weekly, and either party to be at liberty to give three months’ notice from any quarter-day, and at the expiration thereof to determine the tenancy. The pauper continued above a year in the occupation of the premises, and paid a full year’s rent. The case was argued on the first day of these sittings.—BAYLEY, J. delivered the judgment of the Court. This is a question on the 6 G. 4. c. 57. The pauper agreed to take the house in December 1825, after the passing of the 6 G. 4., and having complied with the other requisites, if there was a renting for a whole year, he clearly gained a settlement. This act repeals the 59 G. 3. c. 50. and then enacts, “that no person shall acquire a settlement by renting a tenement, unless it consist of a separate dwelling-house or land, *bonâ fide* rented for the sum of 10*l.* a year at the least for the term of one whole year, nor unless it shall be occupied under such yearly hiring, and the rent for the same actually paid.” There is nothing in the preamble of the 6 G. 4. c. 57., or of the 59 G. 3. c. 50. which shews that it was in the contemplation of the legislature to require more than what would constitute in ordinary cases a tenancy for a year. The preamble of the 59 G. 3. recites nothing more than that many disputes and controversies had arisen respecting the settlement of poor people in parishes in *England* by the renting of tenements. The 6 G. 4. begins by reciting, that “whereas the settlement of the poor has been made in some instances to depend upon the annual value of tenements which they may have rented, &c., and whereas the ascertaining such value in such cases has given rise to very expensive litigation,” &c. and then repeals the act 59 G. 3. There is no recital in either, that any inconvenience had arisen where the tenancy by the original hiring was defeasible. There is nothing to shew that the words, “for one whole year,” in the

6 G. 4. require a different agreement from that which is necessary in common cases to constitute a yearly taking. Is then "a taking at twenty guineas a year, the rent to be paid weekly, and either party to be at liberty to give three months' notice from any quarter-day, and at the expiration thereof to determine the tenancy," to be considered "a bonâ fide renting of a tenement for the term of one whole year?" A taking at an annual rent, though the rent is to be paid weekly, is *primâ facie* a yearly tenancy; if there had been no proviso about quitting at three months' notice, there could have been no doubt on the subject, as it would then have been an ordinary yearly tenancy, with the rent to be paid weekly instead of quarterly or half yearly. What, then, is the legal effect of a tenancy for a year, with a proviso for determining it in the middle of the year? Such a proviso does not prevent it from being a yearly tenancy: when the party is *in*, he is *in* of the whole estate for a year, liable to a defeasance on a particular event. In all cases of defeasible estates, when the party enters, he is *in* of the whole estate, though an event may afterwards occur which would prevent the estate from continuing during the whole period of time contemplated in the original grant of it. As where there is a lease for twenty-one years, determinable at the end of seven or fourteen years, the party, when he enters, is *in* of a term of twenty-one years, but a defeasible term, and which may terminate by matter *ex post facto*. So in the case of a common lease, with proviso for its defeasance by non-payment of rent, non-performance of covenants, or the like, the party enters for the whole term, liable to be defeated by a future event. Lord Coke, 1 *Inst.* 42 a., puts several cases of defeasible estates: "If a man grant an estate to a woman *dum sola fuit*, or *durante viduitate*, or *quamdiu se bene gesserit*, &c., in all these cases the lessee hath in judgment of law an estate for life determinable, and in pleading shall allege the lease, and conclude that by force thereof he was seised generally for term of his life." This is on the principle that when an interest is granted to him, liable to be determined on a particular event, the whole interest is vested in him in the first instance, but it may be taken out of him by the occurrence of that event. On the same principle Buller J., speaking of the effect of a lease from year to year in *Birch v. Wright* (a), says, "If a tenant from year to year holds for four or five years, either he, or his landlord, at the expiration of that time, may declare on the demise as having been made for such a number of years." This is on the principle that it is to be considered a lease for so many years as the party shall occupy, unless in the mean time it shall be defeated by notice on the one side or on the other. On the like principle, in this case the taking by the pauper is to be considered a lease for one whole year in its creation, although an event might happen by which the original interest so created in the first instance would be changed. The event did not happen: he occupied the house for a whole year, and paid the rent, which exceeded 10*l.* during the same period. He, therefore, gained a settlement in *All Saints, Hastings*, and the order of sessions must be quashed.—Order of sessions quashed (b).

(a) 1 T. R. 378.

(b) The decision in this case is precisely within the principle laid down in *Rex v. Byker*, 2 B. & C. 120., as to conditional hirings of servants. "If the bargain be originally made for an entire year, and terms are introduced applicable to a continuance of the relation of master and servant (landlord and tenant), during the

Pauper took a house for a year at 10*l*. Having lived there nearly the whole term, he abandoned the premises a few weeks before the year ended, and they were then occupied by another person. It did not appear how that party came in. The pauper paid the whole year's rent. He gained a settlement under 59 G. 3. c. 50., by holding the house for a year.

109. *Rex v. Stow Bardolph, T. T. 11 G. 4. & 1 W. 4.—1 B. & Ad. 219.*—Upon appeal against an order of two justices, whereby *Martin Buck* and *Elizabeth* his wife, and their children, were removed from the parish of *Stow Bardolph* to the parish of *Downham Market*, both in the county of *Norfolk*; the sessions quashed the order, subject to the opinion of this Court on the following case:—The pauper, *Martin Buck*, at old *Michaelmas* 1819, hired a house in the parish of *Downham Market*, of one *Jonah Weston* for a year, at the rent of 10*l*. He occupied the house from that time until a few weeks before old *Michaelmas* 1820, when he removed to another house. The house was then occupied by one *Mary Palmer*. The pauper paid the whole year's rent, and took a receipt. The court of quarter sessions found that the pauper had, previously to the *Michaelmas*, entirely abandoned the possession of the house, and stated the question for the opinion of the Court of King's Bench to be, "Whether the pauper having entirely given up possession of the house, four or five weeks before *Michaelmas*, and being succeeded by another occupier, yet paying the whole year's rent, could be considered to have held the house for one whole year, within the meaning of the 59 G. 3. c. 50., so as to gain a settlement in the parish of *Downham Market*.—BAYLEY J. This is a plain case. The distinction between land and houses under 59 G. 3. c. 50., was laid down in *Rex v. Tonbridge (a)*. Land was to be occupied: a house might be held only. In the latter case, "So as the tenure subsisted, it was sufficient." (b) Can it then be presumed here, that the relation of landlord and tenant was determined? It must be taken to have continued, unless a determination of it be shewn. The case finds that the pauper hired this house for a year, and occupied it till a few weeks before old *Michaelmas*, when he abandoned the possession, and removed to another residence; that the house was then occupied by another person, and that the pauper paid the whole year's rent. It does not appear how the succeeding occupier came in. The duty of a tenant on quitting possession is to give up the premises to his landlord; it was essential to the appellants' case that there should have been a surrender, but nothing of this kind is stated. The rent is not shewn to have been paid before the end of the year, nor does any intervention of the landlord appear previous to that time. *Abandoning* does not determine a tenancy; the tenant held till he should give up to the landlord, and that, according to the case, must be taken to have been at the expiration of the year.—LITLEDALE J. It should have appeared that the holding was put an end to, not merely that the possession was abandoned. If the pauper had given up the premises, and the landlord with his assent, had accepted *Mary Palmer* as tenant, that would have been a surrender by act and operation of law, as in *Thomas v. Cook (c)*. But we are not informed how *Palmer* came into possession.—PARKER, J. The statute is not clearly penned, but construing it as other acts and wri-

"whole year, but there is also a provision, that in a given event it shall be competent to the parties to put an end to or suspend the service (tenancy) for a part of the year, still a settlement is gained if the service is actually performed (tenancy actually exists) for a whole year, and neither party avails himself of the condition. "A conditional hiring (renting) is for this purpose the same as an absolute hiring (renting), unless the condition is acted upon."

(a) 6 B. & C. 88.

(b) 6 B. & C. 92.

(c) 2 B. & A. 119.

tings are construed, we must suppose a distinction intended between lands and houses; that an occupation of the one for a year is required, but not of the other. In this case, for the purpose of the act, the house was the pauper's during all the year. Unless it could be shewn that a regular surrender took place, or that another person was let into possession with the consent of the pauper as tenant (as in *Thomas v. Cook*) we cannot say that his interest ceased until the year was out.—Order of sessions quashed.

110. *Rex v. The Inhabitants of Helsham, T. T. 1 W. 4.—2 B. & Ad. 620.*—On appeal against an order of two justices, whereby *Richard Way* and *Winnifred* his wife, were removed from the township of *Market Weighton* in the East Riding of *Yorkshire* to the township of *Helsham* in the same riding. The sessions confirmed the order of removal, subject to the opinion of this Court on the following case:—On the 1st November, 1813, the pauper *Richard* being then legally settled in the appellant parish of *Helsham*, came to reside on a tenement in the parish of *Sculcoates* of more than the yearly value of 10*l*. He entered upon it a fortnight after *Michaelmas*. The bargain with the owner of the tenement was, that the pauper should live a month in it for nothing on trial; and that if on that trial he liked it he should take it at *Martinmas*, at the yearly rent of 14*l*. The pauper resided upon it for a month on trial, and then, according to the agreement above-mentioned, took it at *Martinmas* at the yearly rent of 14*l*., and without any interruption in the residence continued on it for the following month. He then quitted the parish altogether, and did not subsequently acquire any settlement elsewhere.—Lord TENTERDEN C. J. I am of opinion that the pauper gained a settlement in *Sculcoates*. It is clear that he actually resided there more than forty days on a tenement of the yearly value of 10*l*. Then it is said, that when he first came there, he had not an absolute intention to settle for so long a time as forty days, but that it was his intention to try whether the premises would suit him; and if they did, then to stay for a year. There is no authority to shew that the original intent of the party must be absolute and unqualified to continue for forty days, and I am unwilling to introduce a new term or condition to the gaining of a settlement by coming to settle on a tenement. Here the intention of the pauper was to stay for one month certain, and perhaps for a year; and it has been properly observed, that the recital in the statute 13 & 14 Car. 2. c. 12. does not import a permanent intent, but applies only to persons coming to settle for a short time.—LITLEDALE J. The statute 13 & 14 Car. 2. c. 12. does not require that the party should come to settle permanently, or should make a contract to occupy for a year. The time for which the tenement is taken is unimportant, provided there be an occupation for forty days. Accordingly, taking land from *June* till *Lady-day* following, or a house for five months, or a room for a week, has been held sufficient: *Staunton-under-Barndon v. Ulescroft* (a), *St. Mathew's, Bethnal Green, v. St. Botolph's* (b), and *Rex v. Whitechapel* (c). The question really is, whether the party, after he came to the tenement, was irremovable, and whether he resided there forty days? Here it depended on himself whether or not he would remove during that time. If he chose to continue after the

Pauper, on the 1st of Nov. 1830, came to reside on a tenement of the yearly value of 10*l*. The bargain with the owner was, that the pauper should live a month in it for nothing, on trial; and that if, on that trial, he liked it, he should take it at *Martinmas* at the yearly rent of 14*l*. The pauper resided on it for a month on trial, and then took it at the rent agreed upon, and without any interruption in the residence continued on it for the following month: Held, that he thereby gained a settlement.

(a) *Burr. S. C. 558.*(b) *Burr. S. C. 574.*

(c) 2 Bott, 132. pl. 187.

first month, he might do so by the terms of his contract, and he elected to continue, and did reside forty days. He therefore gained a settlement, having an interest as tenant during the whole of that term. In *Rex v. Netherseal* (a) *Ashhurst J.* says, that in order to acquire a settlement by taking a tenement of 10*l.* a year, it is not absolutely necessary that there should be an express contract for the tenement: it is sufficient if the tenant reside forty days on a tenement of such a value with the permission and consent of the landlord; for in such case the law implies a contract. Here the pauper resided during forty days with the consent of the landlord, and therefore gained a settlement.—*PARKER J.* My first impression upon reading this case was, that no settlement was gained by the pauper in *Sculcoates*; that in order to gain a settlement by coming to settle, there must be an intention to reside permanently; but I am now satisfied I was wrong. The question turns upon the meaning of the words, “coming to settle,” and some light may be thrown on that point by the resolution of the Judges of assize in 1833. (a) One of them was, that “the law unsettleth none who are lawfully settled, nor permits it “to be done by practice or compulsion; and every one who is settled “as a native, householder, sojourner, an apprentice, or servant for a “month at the least, without a just complaint made to remove him “or her, shall be held to be settled.” It would appear, therefore, from that resolution, that the word *settle* did not import any thing permanent. Here it is clear, that the pauper’s original intention was to reside for a month at least; and, in fact, he resided for two months, and in the character of tenant. He had an interest during the first month, though no rent was to be paid, and he afterwards had an interest in the premises for a year, and he resided during forty days, having during that time an interest as tenant. A person coming into a parish casually for some temporary purpose will not thereby acquire a settlement; but a person coming to reside in a house with a purpose of making it his home, and continuing there for forty days, does, by that residence, become settled.—*TAUNTON J.* The statement in the case, that the pauper was to live in the house a month on trial created an impression on my mind that he had no interest in the premises during the first month, sufficient to confer a settlement, but I am now satisfied that in that respect I was wrong. It appears from the case that the bargain was, that the pauper should live a month in the house for nothing, on trial; and if on that trial he liked it, he should take it at *Martinmas* at the yearly rent of 14*l.* The intention was, to ascertain whether the house would suit him, but at all events he was to have it for a month. The occupation during that month was by leave and license of the owner, who could not lawfully disturb him; he then took it for a year at a certain rent, and occupied for a month, and the two occupations may be coupled together so as to make up the forty days. There are many cases to shew that a tenant at will or by sufferance, not paying any rent, may gain a settlement by residing on a tenement.—Order of sessions quashed.

(d) 4 T. R. 258.

(e) See 1 *Nol. P. L.* 273.

Of the Residence necessary.—2 Bott, pl. 230.

111. *Rea v. Wainfleet All Saints, E. T. 9 G. 4.*—8 B. & C. 227.—Upon an appeal against an order of two justices for the removal of *B. Markwell*, his wife and children, from the parish of *Wainfleet All Saints* in the parts of *Lindsey*, in the county of *Lincoln*, to the parish of *Horncastle*, in the same parts and county, the sessions quashed the order, subject to the opinion of this Court on the following case:—The pauper, *B. Markwell*, previously to *Lady-day* 1822, hired from his wife's mother seven acres of land, situated in the parish of *Horncastle*, which she then rented at the yearly sum of 8*l.* 1*s.* 6*d.* and for which the pauper agreed to pay her the same rent, and 3*s.* per week in addition, his tenancy to commence from the ensuing *Lady-day*. No time was specified for which the pauper agreed to take the land, but he occupied it from the *Lady-day* before mentioned for three years, and paid the several rents as they became due; and he resided and slept in a house in the same parish (of *Horncastle*) for upwards of forty days and nights, in the year immediately subsequent to the said *Lady-day* 1822. The question for the opinion of this Court was, whether this taking, followed by the occupation stated, was sufficient, within the 59 G. 3. c. 50. to entitle the pauper to a settlement in the parish of *Horncastle*.—BAYLEY J. The case states that the pauper hired of his wife's mother, seven acres of land, which she then rented at a yearly rent, and that he agreed to pay her that yearly rent, and also a weekly rent of three shillings. (a) *Prima facie*, a general hiring must be presumed to be a yearly hiring and that presumption is the stronger where the subject matter of the hiring is land, because land varies in its value at different periods of the year. It is said that the mother's estate was determined at the end of the current year, and that she could not, therefore, convey to the pauper an interest for a year commencing on a future day. But the mother was tenant from year to year. She had an interest, therefore, which would continue beyond the year, unless something was done to determine it, viz. unless six months' notice to quit was given. That interest she conveyed to her son. I think, therefore, that the land in this case was hired for a year. The other objection is, that no settlement was gained, because the pauper did not reside on the land, although he resided in the parish; and, secondly, that he did not reside in the parish for a year. Before the 59 G. 3. c. 50. actual residence in the parish for forty days upon a tenement of the yearly value of 10*l.* conferred a settlement, although the party did not pay any rent for the forty days. But the 59 G. 3. c. 50. altered the law in that respect, and the language of that statute must be abided by as nearly as possible. That statute enacts, that no person shall acquire a settlement in any parish by reason of dwelling for forty days in any tenement rented by such person, unless certain conditions therein mentioned be complied with. It seems, therefore, that residence for forty days will be sufficient to confer a settlement, if the other requisites of the act be complied with. Now it requires, among other things, if the tenement consist of land, that it should be hired and occupied for the term of one year at and for the sum of 10*l.*

Since the 59 G. 3. c. 50. a settlement may be gained by a residence of forty days in a parish, provided the party comply with the conditions mentioned in that act. And, therefore, where a pauper, since that statute, hired land for a year at the sum of 10*l.*, and paid that rent, and occupied the land for the whole year, but resided only forty days in the parish, and not upon the land, it was held, that he gained a settlement.

(a) *Doe v. Brown*, 8 East, 166. *Doe v. Watts*, 7 T. R. 83.

and that the rent for that period should be paid. Here all those requisites have been complied with. It does not appear, therefore, to be essential in this case that the pauper should have continued in the parish for the year. It is sufficient that he resided in the parish for forty days, provided he hired and occupied the land in the parish for the year, and paid the rent for that period. The pauper, therefore, gained a settlement in *Horncastle*, and the order of sessions was wrong.—*HOLROYD J.* For the reasons given by my brother *Bayley*, I am of opinion that the land was clearly hired for a year, and that since the 59 G. 3. c. 50. a residence for forty days in a parish is sufficient to confer a settlement, provided the other requisites in that act be complied with.—*LITTLEDALE J.* concurred. Order of sessions quashed (a).

112. *Rex v. Ockley*, T. T. 1 W. 4.—1 B. & A. 818.—Upon an appeal against an order of two justices, whereby *Marland Wonham*, his wife and children, were removed from the parish of *Dorking*, in the county of *Surrey*, to the parish of *Ockley*, in the same county; the sessions confirmed the order, subject to the opinion of this Court on the following case:—In the year 1824, the pauper rented a dwelling-house, garden, and meadow, in the parish of *Dorking*, at 7l. per annum, and continued to occupy the premises till *Michaelmas* 1826. At *Michaelmas* 1824, the pauper took four fields of meadow or pasture land, situate in the same parish, of Mr. *Arthur Dendy*, under an agreement, whereby *Dendy* covenanted, &c. with *Wonham*, to let him have the grass growing on ten acres of meadow land situate at *Coldharbour*, *Surrey*, from *Michaelmas* 1824 to *Michaelmas* 1825, in consideration of the sum of 8l. 10s. payable by *Wonham* to *Denby* on or before *Lady-day* 1825, and a further sum of 8l. 10s. payable in like manner on or before *Michaelmas-day* 1825. In pursuance of this agreement, the pauper entered into possession of the fields at *Michaelmas* 1824, dressed them, and turned his cattle upon them; but in *April* 1825, having been compelled to sell his stock, and having none from that time to put in the fields, he agreed with his brother-in-law, *Hills*, to let him take the grass for the remainder of the term, upon payment of the rent from that time by *Hills* to *Denby*; but *Denby* was not aware of this agreement. In pursuance of such agreement, *Hills* stocked the fields, cut and carried away the crops, and enjoyed them until *Michaelmas* 1825, when he went to *Dendy* and offered to pay him the rent; but *Dendy* refused to take it unless the pauper was present, and accordingly the pauper and *Hills* afterwards went together to *Dendy*, and *Hills* paid the rent in the presence of the pauper, and *Dendy* gave the pauper a receipt for the same. The whole rent stipulated for by the agreement in *August* 1825 was paid. The question for the opinion of this Court, was, whether, under the above circumstances, the pauper gained a settlement in the parish of *Dorking*, by renting a tenement under the 59 G. 3. c. 50. and the 6 G. 4. c. 57. Lord TENTERDEN C. J. We are not called upon to say what would be the effect of the 6 G. 4 c. 57. as connected with the 59 G. 3. c. 50. as he had not continued to fulfil the conditions of 59 G. 3. c. 50., by personally occupying the land down to the time when 6 G. 4. c. 57. passed. And *Quere*, if he had done so, whether the 6 G. 4. c. 57., which only requires that the land be occupied under the yearly hiring, could have had a retrospective effect, so as to make the former occupation available in conjunction with that under the new statute.

(a) See *Rex v. Barham*, pl. 98.

In 1824, the pauper rented a dwelling-house in the parish of D., at the rent of 7l. per annum, and continued to occupy it till 1826. At Michaelmas 1824 he hired land to Michaelmas 1825, at the yearly rent of 8l. 10s., and then entered into possession, but in April 1825 he underlet the land for the remainder of his term; the under-tenant had possession of the land till Michaelmas 1825; and he, by agreement with the pauper, paid the original landlord the rent accruing due from April to Michaelmas 1825, the rest having been paid by the pauper: Held, that the pauper did not gain a settlement by occupation for a year, inasmuch

if the pauper had continued until the repeal of the last-mentioned statute, doing all the things thereby required. Here, the pauper had not only not gained a settlement by complying with the provisions of that act, when the new statute passed, but he was not in progress of gaining one, for he had ceased to occupy before the expiration of the year's tenancy. Unless, therefore, the 6 G. 4. c. 57. had passed, he never could have gained any settlement. Now that statute cannot have the effect of making that a good settlement which would not have been good within the 59 G. 3. c. 50. if that act had continued in force. Besides, I must say, I do not think the statute 6 G. 4. c. 57. can be retrospective in part, but not so for all purposes. The order of sessions must be confirmed.—LITLEDALE J. We are not called upon to say whether the pauper would have gained a settlement if he had continued until the 6 G. 4. c. 57. to do every thing which the 59 G. 3. c. 50. required to be done; because, here, the pauper was not in progress towards gaining a settlement at the time when the last statute passed. That being so, I think that that which would not have been a good settlement if the 59 G. 3. c. 50. had continued in force, is not rendered good by the subsequent statute.—TAUNTON J. It is conceded that the pauper in this case did not comply with the provisions of the 59 G. 3. c. 50. so as to gain a settlement under that statute. The provisions of that statute continued to be the law, till the passing of 6 G. 4. c. 57. If no settlement therefore, could be gained within that statute, I cannot understand how the 6 G. 4. c. 57. can govern the gaining of a settlement under a hiring and renting which began at *Michaelmas* 1824. To say that a settlement was gained by virtue of a statute which had not begun to operate, would extend the 6 G. 4. c. 57. over a period governed by another statute, and would give it not only a retrospective, but a suspending operation. But as there had ceased to be even an inchoate settlement, before the 59 G. 3. c. 50. was repealed, I think it is impossible to maintain that a settlement was gained by virtue of the provisions of the 6 G. 4. c. 57. which did not begin to operate till the pauper's occupation had been discontinued.—PATERSON J. There was an interval between *Michaelmas* 1824 and *June* 1825, when there was not an occupation by the pauper sufficient to satisfy the existing law; and that defect cannot be supplied by a subsequent statute. The order of sessions, therefore, must be confirmed.—Order of sessions confirmed.

SETTLEMENT BY BEING RATED AND PAYING TAXES.

2 Bott, pl. 230.

115. *Rex v. Lower Heyford*, T. T. 11 G. 4. & 1 W. 4.—1 B. & Ad. 75.—Upon appeal against an order of two justices, whereby the children of *John Garratt* were removed from the parish of *Banbury*, within the borough of *Banbury*, in the county of *Oxford*, to the parish of *Lower Heyford*, in the same county, the sessions confirmed the order, subject to the opinion of this Court on the following case:—*John Garratt*, the father of the paupers, had been for many years previous to his death the clerk of Mr. *Bignell*, an attorney. In *September* 1818, Mr. *Bignell* took certain premises in *Caulcot*, in the appellant parish, consisting of a cottage, garden, orchard, and about thirteen acres of land, for a term of seven years, at the yearly rent of 38*l.*, and in the year 1819, he allowed his clerk, *John Gar-*

An attorney, having a cottage and land near his residence, allowed his clerk to occupy them, that he might the more conveniently attend to the business; and suffered him to hold them rent free, as an augment

ation of his salary: the clerk was rated as occupier, but the attorney was sometimes called upon to pay, and did pay, the rates; and when the clerk paid them, the attorney reimbursed him: Held, that the clerk gained a settlement by paying the public parochial taxes.

ratt, (who up to that time lived at *Bicester*,) to reside at the cottage, as being nearer to *Middleton*, his own residence, and more convenient for business. *Garratt* accordingly removed to *Caulcott* with his family, and lived in the cottage, to which three acres of land were attached, and which *Garratt* occupied for several years, but he never had any thing to do with the remainder of the land. Mr. *Bignell* always paid the entire rent to his landlord, and *Garratt* paid no rent; neither was any reduction made in his salary; and Mr. *Bignell* stated, as his reason for this, that *Garratt* had a large family, and his salary was low, and as an augmentation to it, he, Mr. *Bignell*, permitted him to occupy the cottage, &c., valued by Mr. *Bignell* at 20*l.* per annum. *Garratt* left the premises when required, without receiving any notice to quit. In the books of the appellant parish *Garratt* was rated as the occupier of the cottage and land, and he paid the rates, although Mr. *Bignell* was sometimes called upon to pay, and did pay, the entire rate so assessed. The rates, when paid by *Garratt*, were either repaid to him by Mr. *Bignell* or allowed in account. Upon these facts, the sessions determined that there was no such renting of a tenement as would confer a settlement, but confirmed the order on the ground that *Garratt* had come to inhabit in the appellant parish, and been charged with and paid his share towards the public taxes thereof.—BAYLEY J. now delivered the judgment of the Court. This case depended on the settlement of *John Garratt*, the father of the paupers. The facts were these: *Garratt* was clerk to Mr. *Bignell*, an attorney. Mr. *Bignell* rented a cottage and about thirteen acres of land in *Lower Heyford*, and he suffered *Garratt* to live in the cottage, to which three acres of land were attached, rent free. For this cottage and land *Garratt* was rated, and he paid the rates; but Mr. *Bignell* either repaid him or allowed him the money in account. Whether he was rated for the whole thirteen acres, or only for the cottage and the three, does not appear very clearly upon the case; but if what he was rated for was of the yearly value of 10*l.*, which has not been disputed, it is, in our view of the case, sufficient. Upon these facts two questions appear to have been made at the sessions: one whether he gained a settlement by coming to settle upon a tenement of the yearly value of 10*l.*, and the other whether he gained one by coming to inhabit in the parish, and being charged with and paying his share towards the public taxes and levies of the parish; the sessions thought he gained a settlement by the latter mode, and we think their decision was right. It was decided in *Rex v. St. Pancras* (a) that the 35 G. 3. c. 101. s. 4. has not entirely abolished this head of settlement, but that it still remains in force where the premises for which the rates are imposed are of the value of 10*l.* a year. The 3 W. & M. c. 11., upon which this head of settlement depends, prescribes the steps where a settlement shall be obtained by notice, and by section 6. provides that if any person who shall come to inhabit in any parish shall be charged with and pay his share towards the public taxes or levies of the said parish, he shall be adjudged to have a legal settlement therein, though no notice has been given. The questions, therefore, in this case are, did *Garratt* come to inhabit in this parish? and was he charged with, and did he pay his share towards the public taxes or levies of this parish?

and upon these points there is no doubt. It was never contended that he did not gain a settlement upon these grounds. The grounds upon which it is contended that he did not gain a settlement are, that he was not properly tenant of the cottage and land, though he occupied them, but that he occupied rather as servant to Mr. *Bignell*; that Mr. *Bignell* was to be considered as the person rated, though it was in *Garratt's* name; that there was nothing which could properly be called *Garratt's* share of the rates; and that though he paid the rates in the first instance, he was either reimbursed or allowed them in account by Mr. *Bignell*. It is not necessary for us to decide whether *Garratt* was properly tenant of this cottage and land (though, as the occupation of this cottage and land was unconnected with, and wholly independent of, the service of *Garratt* to *Bignell*, there would be no difficulty in the decision), but it is not necessary to decide this question; because the settlement in this case depends, not on the coming to settle on a tenement under the 13 & 14 Car. 2. c. 12., in which case the relation of landlord and tenant is essential, but on the coming to inhabit, and being charged with and paying his share of the public taxes or levies of the parish, under the 3 W. & M. c. 11. s. 6., in which case the relation of landlord and tenant is not necessary; but all that is requisite is, that the parish shall rate the party, so as to shew that they are aware that he is in the parish, and that he should pay upon such rating. That the relation of landlord and tenant is not necessary in the latter case, under the 3 W. & M. c. 11. s. 6., is established by *Rex v. Stapleton (a)*. There the pauper lived with his mother, and was rated for a house and land she occupied. He occupied nothing in the parish himself, and yet it was decided, that by paying such rate he gained a settlement; for the parish, by rating him, had shewn that they knew he was inhabiting within the parish, and had recognised him as an inhabitant, and by making the payment, he had performed that part of the condition the statute imposes upon the person charged, viz. paying his share. It was contended there, as it has been contended here, that as he was not occupier, no part of the rate could be called his share; but that argument was overruled. Now that case is much stronger than this; for there the person rated was not the occupier; here he clearly is. The remaining objection, that *Garratt* had been reimbursed the rate, is sufficiently answered by *Rex v. Axmouth (b)*, which was cited in the argument. There a custom-house officer was rated for his salary to the land-tax, and paid the rate, but he always either got the amount from the collector beforehand, or was repaid by him afterwards; and the collector was under orders from the treasury to reimburse the officers of his description. This was adjudged to give the officer a settlement; and Lord *Ellenborough*, in delivering his judgment, said, "As to his being reimbursed afterwards, all the cases agree that 'that makes no difference.'" We are therefore of opinion, that *Garratt* is to be considered as having been charged with and paid his share towards the public taxes of *Lower Heyford* within the meaning of 3 W. & M. c. 11. s. 6., and that the decision of the sessions was right.—Order of sessions confirmed.

114. *Rex v. East Teignmouth, T. T.* 11 G. 4. & 1 W. 4.—The land-tax is a parochial rate within the
1 B. & Ad. 244.—Upon an appeal against an order of two justices,

(a) *Burr. S. C.* 649.

(b) 8 East, 383.

meaning of the 6 G. 4. c. 57.; and, therefore, no settlement can be gained by the payment of that tax in respect of a tenement above the yearly value of 10*l.*, unless all the things required by that statute as to the taking, payment of rent, &c. have been done.

whereby *G. White* and his wife and children were removed from the parish of *East Teignmouth*, in the county of *Devon*, to the parish of *Bishopsteignton*, in the same county, the sessions quashed the order, subject to the opinion of this Court on the following case:—The pauper a short time before *Lady-day* 1825 hired a mill and some closes of land in the parish of *Bishopsteignton*, at the rent of 30*l.* a year, from the said *Lady-day*, and occupied the premises, residing thereon, with some intervals during which he was under arrest, till shortly after *Christmas* 1826, when, in consequence of his rent being unpaid, a negotiation took place between him and his landlord, and he gave up his possession and interest in the property. During his occupancy he was assessed to the parochial and other rates, some of which he paid, and among these, one half year's assessment to the land-tax, due on the 12th day of *April* 1826, was paid by him in the month of *July* following. The question for the opinion of this Court was, Whether the assessment to the land-tax, and payment thereof, conferred a settlement?—*BAYLEY J.* I think that the decision of the court of quarter sessions was right. I quite agree that where a variety of language is found in several acts of parliament in *pari materiâ*, *primâ facie* the inference is that the legislature had a different meaning, but that does not of necessity follow. We must look not only at the words of the statute, but to the cause of making it (*a*), to ascertain the intent; “*qui hæret in litera hæret in cortice.*” The words of the statute 3 *W. & M. c. 11. s. 6.*, so far as respects this question, are “that if any person shall be charged with and pay “his share towards the public taxes or levies of the said parish, he “shall be adjudged to have a legal settlement in the same.” The 35 *G. 3. c. 101.*, with the accuracy which might be expected from the framer of that act, adopts the words of the 3 *W. & M.*, and enacts, “that no person who shall come into any parish shall gain a “settlement in such parish by being charged with and paying his “share towards the public taxes or levies of the said parish for or “in respect of any tenement not being of the yearly value of 10*l.*” A question had arisen previous to *Rex v. Bramley (b)*, which was under the statute 3 *W. & M. c. 11. s. 6.*, whether the land-tax was a public tax and levy of the parish. It was said not to be a parochial tax; and it was not so in one sense, because, when raised, it was not applicable to a parochial purpose; but it was held to be one of the public levies and taxes of the parish, and that construction has been put on the act in several cases. Then, if a settlement might be obtained before the passing of the statute 6 *G. 4. c. 57.* by paying public taxes of the parish, are not such taxes “*parochial*?” within the meaning of that statute, taking the word in a large sense. The argument is, that the words “parochial taxes” in the latter statute import taxes raised for parish purposes. But that is not of necessity the meaning of the words “parochial taxes.” They may mean taxes of the parish; and if they may have two meanings, the question is, in what sense they were used in the statute 6 *G. 4. c. 57.*? The title of the act is “An Act for the amendment of the law respecting “the settlement of the poor as far as regards renting tenements and “paying *parochial taxes.*” Now these latter words undoubtedly mean taxes of the parish, by the payment of which a settlement might

(a) See *Plow.* 173. 204.

(b) *Burr. S. C.* 75.

be gained by virtue of the statute 3 *W. & M.* It then recites, "that the settlement of the poor has been made in some instances to depend upon the annual value of tenements which they may have rented, or upon the annual value of tenements in virtue of which they had paid *parochial rates*." It is conceded there is no distinction between the words "rates" and "taxes." The recital, therefore, refers to the annual value of tenements, in respect of which settlements might have been gained by virtue of the statute of 3 *W. & M.* by payment of public taxes or the rates of the parish. The statute proceeds to enact, "that no person shall acquire a settlement by paying parochial rates," &c. There is undoubtedly a confusion of language; but we may collect from the title and preamble, that it was intended to use the words "rates" and "taxes" as synonymous, and the word "parochial" in the general large sense, "of the parish." There is nothing to shew that a different sense was intended. If this be so, it concludes the present question; because the land-tax has been decided to be a tax of the parish. I think, then, the words "parochial rates" in the 6 *G. 4. c. 57.* are not to be confined in construction to rates or taxes raised for the purposes of the parish, but that they are to be construed in the same sense as the words "taxes of the parish" in the 3 *W. & M. c. 11. s. 6.* and 35 *G. 3. c. 101. s. 4.*, and, therefore, that they import taxes raised within the parish. That being so, then that statute prevents the gaining of a settlement by reason of any person being assessed to and having paid parochial taxes, unless the rent has been paid for the term of one whole year. Here that condition has not been complied with, and consequently no settlement has been gained.—LITLEDALE J. I am of opinion that, construing the word "parochial" in a large sense, the land-tax is a parochial rate within the meaning of the act of parliament. In common parlance the word "taxes" is used to denote taxes raised for the general purposes of the state; the word "rate," to denote taxes raised for local purposes. But generally speaking, a rate is a levy; and a parochial rate is a levy raised within the district called a "parish," though it be applicable to the purposes of the state. That being the general meaning of the term, there is no ground for saying that it was intended to be used in any other sense in the statute 6 *G. 4. c. 57.*; and if not, then no settlement was gained by the payment of the land-tax; it was the payment of a parochial rate, and the requisites of the statute 6 *G. 4. c. 57.* had not been complied with by occupying and paying the rent of the tenement during one whole year.—PARKER J. The question turns entirely on the construction to be put on the statute 6 *G. 4. c. 57. s. 2.* by which it is enacted, "that no person shall acquire a settlement by reason of settling upon, renting, or paying *parochial rates* for any tenement, &c. unless such tenement shall consist," &c. If the words "parochial rate" are to be understood of any tax levied within the parish, then no settlement was gained, because in that case the act applies. But if it be understood as applicable only to a tax raised strictly for the purposes of the parish, then a settlement was gained. Now it is a good rule of interpretation to take the words of an act of parliament in their plain grammatical construction and ordinary sense, unless it appear clearly from the context that the legislature intended them to be used in some other. Here, by looking at the title of the act and the mischief recited, and by comparing the title and the recital with the body of the

act. it is manifest that the legislature meant to use the words "parochial rates," in the sense of rates or taxes raised within the parish. The title of the act is, "An act for the amendment of the law respecting the settlement of the poor as far as regards renting tenements and paying parochial taxes." Now before this statute, a settlement might be gained by the payment of taxes raised within the parish. The words "parochial" clearly applied to that term. The mischief recited is, "that the settlement of the poor had been made in some instances to depend upon the annual value of tenements which they may have rented, or upon the annual value of tenements in virtue of which they had paid parochial rates, and that the ascertaining such value in such respective cases had given rise to very expensive litigation." I conclude, therefore, from the preamble that the parochial rates therein mentioned were intended to include all parochial rates or taxes comprehended in the 3 *W. & M. c. 11. s. 6*, and that that the legislature meant to prevent all discussion and litigation relating to questions of settlement depending upon the payment of such parochial taxes. The land tax was one of those taxes; consequently, since the statute 6 *G. 4. c. 57*. no settlement can be gained by the payment of that tax in respect of any tenement unless all things required by that statute be done. Order of sessions confirmed.

A party does not gain any settlement by reason of his having been assessed to and paid the watch-rate in the city of London.

115. *Rex v. The Inhabitants of Christ Church, London. M. T. 9 G. 4.—8 B. & C. 660.*—Upon an appeal against an order of two justices, whereby *Sophia Gyles*, wife of *John Gyles*, who was absent from her and their two children, were removed from the parish of *St. Anne, Blackfriars*, in the city of *London*, to the parish of *Christ Church*, in the same city, the sessions confirmed the order, subject to the opinion of this Court on the following case:—*John Gyles*, the pauper's husband, occupied part of a house in *Warwick-lane*, in the parish of *Christ Church*, of the yearly value of 20*l.*, for several months in the year 1821, and, during that time, he was rated to, and paid two quarters' watch-rates for the ward of *Farringdon Within*, in which ward the said house is situated. The city of *London* is divided into twenty-six wards, and the wards into precincts. The ward of *Farringdon Within* contains seventeen precincts, and the house, in respect of which the watch-rates were paid by *J. Gyles*, is, with regard to ward-matters, in *Saint Ewin's*, and not in *Christ Church* precinct. The watch-rate is made by the alderman and common-councilmen of each ward, under the authority of the statute 10 *G. 2. c. 22. s. 2.*, which enacts, "for the better raising and levying of monies for paying the wages of the watchmen and beadles, and other charges incident thereto; that the mayor, aldermen, and commons of the said city of *London*, in common council assembled, every year, shall then and there determine and direct what sum and sums of money shall be raised and levied upon each respective ward for answering the purposes aforesaid; and for raising the said several sums of money, direct the alderman, deputy, and common-councilmen of each and every of the respective wards in the said city of *London*, and liberties thereof, to make an equal rate and assessment upon all and every the person and persons who do or shall inhabit, hold, occupy, or enjoy any land, house, shop, warehouse, or other tenement within their respective wards, (regard being had, in making the said rates, to the abilities of, and likewise to the rent paid by the said several inhabitants and occupiers so to be rated and assessed;) and the

alderman, deputy, and common-councilmen of each ward of the said city are hereby authorized and required to make such rate and assessment for their respective wards, in such manner and form as shall be so directed by the said court of common-council, which said rates or assessments shall be collected quarterly from the several inhabitants or occupiers in each of the said several wards, by the several constables for the time being of the several precincts, or by the beadle in each of the said respective wards, as the alderman, deputy, and common-councilmen of each ward shall direct and appoint; and in case of non-payment, the lord mayor, or the alderman of the ward wherein the premises are situate, may grant a warrant to the collector to levy the same." The form of the watch-rates in question (varying the time for which each was respectively made) is as follows: "*London*.—A rate and assessment made upon the several persons who inhabit, hold, occupy, and enjoy any land, house, warehouse, or other tenement within the ward of *Farringdon Within*, (the precincts of *Blackfriars* and *Monkwell* excepted,) for raising money to pay the watchmen and beadles appointed for the said ward, and other charges, incident thereto, (except the watchmen of the aforesaid precincts,) for one quarter of a year, from the 25th of *March* to the 24th of *June* 1821, pursuant to an act of common-council of the year 1820. *St. Ewins, Warwick Lane. John Giles* (3)." The question for the opinion of this Court was, Whether such rate was one of the public taxes or levies within the statute of the 3 W. 3. c. 11., or any subsequent act; the being charged with, and paying towards which confers a settlement on the party so charged and paying.—*BAYLEY, J.* The land-tax was holden to be within the act from the notice of inhabitancy that arises by the party's having been assessed, and paid it. Payment towards a county bridge gives no settlement, because the person pays as an inhabitant of the county, and not of the parish(a). This watch-rate is not a parochial tax, nor is it collected by any officer belonging to the parish. The parish had not notice that the party who paid the watch-rate was an inhabitant of the parish. No settlement, therefore, was gained, and the order of sessions must be quashed.—Order of sessions quashed.

SETTLEMENT BY SERVING AN OFFICE.

Of the Office, and the Appointment to it.—2 Bott, pl. 251.

116. *Rex v. Lew, M. T. 9 G. 4.*—8 B. & C. 655. — Upon appeal against an order of two justices, whereby *W. Purbrick*, his wife and children, were removed from the township of *Charlbury*, in the county of *Oxford*, to the hamlet of *Lew* in the same county, the sessions confirmed the order, subject to the opinion of this Court on the following case:—*W. Purbrick*, the pauper, being settled in the hamlet of *Lew*, was, on the 16th day of *October* 1826, duly elected by the inhabitants of the township of *Charlbury*, in vestry assembled, to be an assistant overseer of the poor of the said township, in pursuance of the statute 59 G. 3. c. 12. s. 7. The vestry determined that the pauper should perform the duties and receive the salary men-

An assistant overseer, elected and appointed under the statute 59 G. 3. c. 12., at an annual salary of 10*l.*, will gain a settlement by serving such office for a year.

(a) 2 *Nol. P. L.* 123. citing *Cases of Sett.* 1.

But the appointment in writing, under the hands and seals of the justices, to such an office, with an annual salary annexed to it, requires a stamp of 2*l*.

tioned in the warrant of appointment hereinafter set forth. On the 18th of the same month he was appointed such assistant overseer by the following warrant under the hands and seals of two justices: "The township of *Charlbury*, in the county of *Oxford*, to wit. "Whereas the inhabitants of the township of *Charlbury*, in the county of *Oxford*, in vestry assembled in the said township on the 17th day of *October* 1826, did nominate and elect *W. Purbrick*, of the township aforesaid, to be an assistant overseer of the poor of the said township, and did fix the yearly sum of 10*l*. as and for the yearly salary of the said *W. Purbrick*, for the execution of his said office. Now we, two of his Majesty's justices of the peace in and for the said township, and in pursuance of the statute in such case made and provided, do hereby appoint the said *W. Purbrick* to be an assistant overseer of the poor of the said township, and we do hereby authorise and empower him to execute and perform the said duties, and to receive the said salary so as aforesaid fixed by the said inhabitants in their said vestry." This warrant of appointment was not stamped. The pauper duly performed the duties of assistant overseer by virtue of the aforesaid appointment, for one whole year from the date thereof, and resided during that time in the township of *Charlbury*. The sessions were of opinion that the warrant of appointment under the hands and seals of two justices did not require any stamp, and they therefore received it in evidence; but they decided that no settlement was gained, subject to the opinion of the Court, first, whether the situation of assistant overseer, described in the warrant of appointment, was an office the serving of which for a year would confer a settlement; and, secondly, if the Court should be of opinion that it was such an office, whether the warrant of appointment, being in writing, required a stamp.—*BAYLEY J.* I have no doubt that the pauper held a public office or charge within the meaning of the statute 3 & 4 *W. & M. c. 11.*, and that he executed that office for himself and on his own account. It was a public office in the parish; the duties were executed throughout the parish. He was appointed to it by the inhabitants of the parish in vestry assembled. I think also that it was an annual office. The pauper was to receive a yearly salary for executing the duties of it; and although he might be removed within the year, he would continue in the office for a year, unless something was done to determine it within that period. He had an estate for a year in his office, defeasible on a particular event; as in the case of a lease for a year, determinable by notice within the year. In that case the lessee is in of the estate for the year, though it may be determined by notice, *Rex v. Herstmonceaux (a)*. The office held by the pauper was held by him in his own right, and not as the deputy of the principal overseer. The office of assistant overseer is separate and distinct from that of principal overseer. The great difficulty in this case arises from the want of a stamp. The statute 55 *G. 3. c. 184. sched. tit. Grant*, requires that any grant or appointment made by any person or persons of or to any office or employment, by writing where the salary, fees, or emoluments appertaining thereto shall not amount to 50*l*. per annum shall have a stamp of 2*l*. If I were at liberty to conjecture, I should say that the legislature did not con-

(a) 6 B. & C. 550. Ante pl. 108.

template an appointment of this description ; but I am bound to give effect to the words used in this act of parliament. The statute 59 G. 3. c. 12. s. 7. authorizes the inhabitants of any parish in vestry assembled to nominate and elect any discreet person to be assistant overseer of the poor, and to determine and specify the duties to be by him executed, and to fix such yearly salary for the execution of the said office as shall by such inhabitants in vestry be thought fit ; and then it authorizes any two justices by warrant to appoint any person so elected, and declares that every person so appointed shall continue to be an assistant overseer until he shall resign such office, or until his appointment shall be revoked. The assistant overseer is required to be appointed by two justices by their warrant in writing. Here the pauper was appointed by a warrant in writing. It is an appointment in writing to an office or employment where the yearly salary does not amount to 50*l.* It, therefore, is within the very words of the act, and required a stamp.—LITTLEDALE J. I think this appointment required a stamp. I cannot get over the words of the act of parliament. There are general exemptions at the end of that part of the schedule of the stamp act which relates to appointments to offices, but this is not within them. I have no doubt on the other point. This is called an office in the act of parliament. It is from the nature of the thing an office. If an overseer be an officer, an assistant overseer is equally so. It is also an annual office ; for there is an annual salary. And although he may be removed within the year, still he is appointed to the office for the year.—PARKE J. concurred.—Order of sessions confirmed.

117. *Rex v. St. Nicholas, Hereford, E. T. 10 & 11 G. 4.—10 B. & C. 832.*—Upon an appeal against an order of two justices, whereby *Sophia Hall*, widow, and her six children, were removed from the parish of *St. Peter*, in the county of *Hereford*, to the parish of *St. Nicholas*, in the same county, the sessions confirmed the order, subject to the opinion of this Court on the following case:—*Thomas Hall*, deceased, the husband of *Sophia Hall*, the pauper, gained a legal settlement in the parish of *St. Nicholas, Hereford*, by renting a tenement. He quitted that house 23d of November 1827, and lived in the parish of *All Saints, Hereford*, till the 23d of June 1828, when he removed to *St. Peter, Hereford*, and resided in that parish till the time of his death, 29th of December 1828. On Monday the 2nd of October 1826, he was appointed by the corporation of *Hereford* to the annual public office of town crier and bellman for the city of *Hereford*, and also sworn in a constable of the city of *Hereford*. He was re-appointed and re-sworn on the 1st of October 1827, and 16th of October 1828, and he executed the office of town crier and bellman in the city of *Hereford*, of which the parish of *St. Peter* forms a part, from the time of his first appointment on the 2d of October 1826 up to the time of his death, 29th of December 1828 ; he was also liable and ready to execute the office of constable when called on, but never had acted as constable. There were other persons sworn in as constables, who acted as such in the city. *Thomas Hall* resided forty days and upwards, namely, from the 23d of June 1828 to the 29th of December, 1828, in the parish of *St. Peter's, Hereford*. The question for the opinion of this Court was, whether the residence of *Thomas Hall* in *St. Peter's* parish for forty days and upwards (while executing the annual public office of

The office of town crier and bellman is a public annual office within the 3 W. & M. c. 11. s. 6., by the execution of which a settlement may be gained ; and if the town comprises several parishes, the settlement will be gained in that parish in which such officer has last resided forty days.

crier and bellman in all the parishes in the city of *Hereford*, namely, from the 23d of *June* 1828 to 29th of *December* 1828), was sufficient to gain a settlement? if it be, his widow, *Sophia Hall*, and family, have gained a settlement in *St. Peter's* parish; but if that residence be not sufficient, their settlement is in *St. Nicholas's* parish.—Lord TENTERDEN, C. J. We are of opinion that the pauper did gain a settlement in the parish of *St. Peter's, Hereford*. The question turns entirely on the statute 3 *W. & M. c. 11. s. 6.*, which enacts, “that “if any person who shall come to inhabit in any town or parish during “one whole year, shall on his own account execute any public office in “the town or parish during one whole year, then he shall be judged to “have a legal settlement in the same, though no such notice in writing “be delivered, and published as is hereby before required.” Now, the office of crier is undoubtedly an office within the meaning of the statute, it need not be confined to a particular parish; but an office in a city containing several parishes will confer a settlement. By the statute 13 & 14 *Car. 2. c. 12.*, a party coming into a parish to settle gained a settlement by forty days’ residence. The statute 1 *Jac. 2. c. 17. s. 3.* enacted, “that the forty days’ continuance in the parish intended by the former statute to make a settlement, should be accounted from the delivery of a notice in writing of the house of abode, &c. to the churchwarden or overseer of the poor.” The effect of that statute, therefore, was to prevent a party gaining a settlement until forty days after the delivery of the notice required to the parish officers. Now, the statute 3 & 4 *W. & M. c. 11.*, after enacting that the forty days shall be accounted from the publication in the church of the notice in writing required to be delivered to the parish officers, substitutes the executing of a public annual office for the notice required in the case of coming to settle upon a tenement; and as in that case a party would be settled in a parish by residing therein forty days after the publication of the notice, by analogy he will gain a settlement by the execution of a public annual office during a year, in any parish where he has last resided for forty days. Here the husband of the pauper did execute a public annual office in the town or parish during one whole year. He comes, therefore, within the very words of the section, and it is a safe rule of construction to adhere to the words of a statute. The seventh section throws some light on the subject. It enacts, “that if any unmarried person, not having child or children, shall be lawfully hired into any parish or town for one year, such service shall be deemed a good settlement therein, though no notice in writing be delivered and published.” Now, although the subsequent statute 8 & 9 *W. 3.* requires that there shall be a service as well as a hiring for a year, yet, it is clear that a party will gain a settlement by a year’s service under a yearly hiring in that parish, wherein he has resided for the last forty days; and it is immaterial, in that case, whether the party be hired before or after he comes into the parish. By analogy to the case of hiring and service, it appears to us that the husband of the pauper having been appointed to the office before he came to reside in the parish; and having served that office for one whole year for this as well as for the other parishes of that town, and having resided there for the last forty days, during which he executed the office, gained a settlement in the parish of *St. Peter's, Hereford*. The order of sessions must, therefore, be quashed.—Order of sessions quashed.

118. *Rezv. Corfe Mullen*, T. T. 11 G. 4. & 1 W. 4.—1 B. & Ad. 211. —Upon appeal against an order of two justices, whereby *Joseph Miller* and his two children were removed from the parish of *Sturminster Marshall* in *Dorsetshire* to the parish of *Corfe Mullen* in the same county, the sessions confirmed the order, subject to the opinion of this Court on the following case:—The pauper having obtained a settlement by hiring and service in the parish of *Corfe Mullen*, went to reside in the tything or chapelry of *West Holme*, a place maintaining its own poor, as shepherd to Mr. *Kemp*. On the 5th of *October* 1824, a court leet for the hundred of *Hasler* was held, in which hundred the tything or chapelry of *West Holme* is situated. At that court, *Kemp*, the tythingman for the preceding year, appeared, and acted in his office of tythingman. On the same day and at the same court, *Kemp* nominated the pauper as a fit person to serve the office of tythingman for the tything or chapelry of *West Holme*, and he was appointed by the jury for one year. The entry, from the books of the court-leet, appeared as follows:—"Oct. 5th, 1824. "Tythingman of *West Holme*. *George Kemp* appears, and *Joseph Miller* is chosen into the office for the year ensuing, and he is directed to be sworn in before a magistrate within one month, under "the penalty of 5*l*." But *Miller* not being present, the steward gave him notice of the appointment as follows:—"Hundred of *Hasler* "to wit. At a court-leet held this day for the said hundred, you "were chosen tythingman for the tything of *West Holme*, and you are "hereby required to be sworn into your office before a magistrate for "the county of *Dorset* within one month after the date hereof under "the penalty of 5*l*. Given under my hand and seal in the said court "the fifth day of *October* 1824. E. CASTLEMAN, Steward." When this notice was shewn to the pauper, he refused to receive it, or to pay the usual fee to the person who served it. The pauper was never sworn into office, but executed all its duties. He was not a householder either at the time of his appointment, or at any time while serving the office; but occupied part of a house, rent free, found for him by his master, Mr. *Kemp*, in *West Holme*, and resided there while serving the said office. On the 4th of *October* 1825, another court-leet for the hundred of *Hasler* was held, when the pauper was present, and acted as the tythingman of *West Holme*, and paid the essoign pence and lawday silver, as is customary with other persons serving the office. At this court another person was appointed tythingman for the year ensuing. The entry of this appointment in the books of the court-leet was exactly in the same form as the entry of *Miller's* in the preceding year.—BAYLEY J. delivered the judgment of the Court. The question in this case was, Whether the pauper obtained a settlement in the tything of *West Holme* by serving the office of tythingman for that place? He was appointed to the office on the 5th of *October* 1824, and we think we must infer from the special case, that he accepted the office on that day, and executed all its duties until and upon the 4th day of *October* 1825, which, as the law does not regard a fraction of a day, constitutes "one whole year." There is no doubt that the pauper acted on his own account, and the objection, that he was not compellable to serve the office, is of no weight. The pauper was never sworn into his office; and the only remaining point in the case is, Whether that

A tithing-man, going out of office, nominated his shepherd, *Miller*, to serve as tithingman the following year. *Miller* was chosen at a court leet holden *October* 5th, 1824, and was ordered to be sworn into office within one month, under the penalty of 5*l*. He never was sworn in, but executed the office; while he did so he was not a householder, but lived in part of a house found for him by his employer. His successor was chosen at a court leet *October* 4th, 1825.

Held, that he gained a settlement in the place for which he served, although not sworn, by executing there, on his own account, a public annual office for one whole year, pursuant to 3 & 4 W. & M. c. 11. s. 6.; and that the question whether or not he was legally placed in the office, according to 9 & 10 W. 3. c. 11. did not arise, he not having been a certificated person.

circumstance was necessary to enable him to gain a settlement? The statute 3 & 4 W. & M. c. 11. s. 6., upon which this question turns, provides "That if any person who shall come to inhabit in any town or parish, shall for himself and on his own account execute any public annual office or charge in the said town or parish, during one whole year," &c. "then he shall be adjudged and deemed to have a legal settlement in the same, though no such notice in writing be delivered and published as is hereby before required." The words of this section, in their ordinary sense, require nothing more than the execution of the office, *de facto*, during one whole year; there is nothing in the context to induce us to come to a conclusion that the legislature meant to use the words in any other than that sense; and this construction is consistent with the supposed object of the statute, which appears to have been to substitute the notoriety of the execution of the office for the notice in writing required in most other cases, as explained in the judgment of Lord Tenterden in *Rex v. Holy Cross, Westgate (a)*. But it is said, that this statute and that of 9 & 10 W. 3. c. 11. are in *pari materiâ*, and are to be construed together; and that the latter statute may be considered as giving a parliamentary exposition of the former: and if so, that no one can be "legally placed" in an office, unless he takes the oath under which it should be executed. We do not, however, think, that the latter statute is to be deemed to alter or affect the construction of the former, as the latter relates to a particular class of persons, namely, certificated paupers, alone; and it is impossible to say that the legislature did not mean to superadd, with reference to that class of persons, another circumstance, namely, that of being legally placed in the office, as a condition of their obtaining a settlement. It becomes, therefore, in this view of the case, unnecessary to decide whether the pauper was "legally placed" in the office according to this latter statute, not having taken the required oath. There can be no question that he executed the office *de facto*, nor, indeed, can there be any that, for some purposes at least, he executed it *de jure*. Swearing in may be rendered necessary either to enable the party to serve the office, or to impose a greater sanction on his discharge of it. We think, in this case, the latter is the object. A month is given for taking the oath; yet the year commences from the appointment. Can it then be said, that the party is not in office till he is sworn? In one of the cases which have been cited (*b*), the swearing in of a tythingman at the end of half-a-year was considered as taking effect *ab initio*. It is laid down in an anonymous case, 1 Ventr. 267., that a churchwarden (and no distinction can be drawn between his case and that of a constable) may execute his office before he is sworn, though it is convenient he should be sworn. And it may be observed, that a mandamus to swear such an officer in is referred to by the Court immediately afterwards in that case; which must therefore be issued, not on the ground that the oath is essential to the due execution of the office, but because it is fit and proper for the interest of the public, that the office should be executed under its sanction. But on the statute 4 & 5 W. & M. c. 11. alone we think it clear, that the pauper gained a settlement in *West Holme* by the execution of the office *de facto*.—Order of sessions quashed.

(a) 4 B. & A. 619. 2 Bott, pl. 250.

(b) *Garsington v. Holy Trinity*, Burr. S. C. 30. 240.

119. *Rex v. Stogursey*, *H. T.* 1 *W.* 4.—1 *B. & Ad.* 795.—On appeal against an order of two justices, whereby *Joel Leversham*, a labourer, and his five children, were removed from the parish of *Stogursey*, in the county of *Somerset*, to *Kilton* in the same county, the sessions discharged the order, subject to the opinion of this Court on the following case:—The office of parish clerk of the parish of *Kilton* being vacant in *October* 1818, the pauper began then to perform the duties of that office, and performed them from thence to the time of his removal in *January* 1830, under the order appealed against. He received a yearly salary of 2*l.* 13*s.* from the parish; but neither he nor any other person was, during that period, chosen by the vicar, in whom the appointment is vested, nor was any such choice signified to the parishioners according to the canon. The pauper, when he first served the office, was resident in the parish of *Kilve*. On the 2nd of *February* 1819, he took a lodging in the parish of *Kilton*, and resided there until the 25th of *March* following, when he went to the parish of *Stogursey*, in which he has since continually resided. The question for the opinion of the Court was, whether the pauper gained a settlement in the parish of *Kilton*.—Lord TENTERDEN C. J. I think the order of sessions must be quashed, on the ground that there was no execution of an office. In my own opinion, there is great doubt whether this be an annual office within 3 & 4 *W. & M.* c. 11. s. 6. It is not so, strictly speaking, for it is more; it is an office for life. *Gatton v. Milwich* (a) can hardly be said to have been decided on the ground that the office was annual. *Powell J.* there says,—“It is more than an annual office, for he is not removable, and has fees.” And in *Helsington v. Over* (b), *Ashton J.* (a judge very well acquainted with the poor law), after observing that the employment of officiating curate under a sequestration cannot be called an annual office, when the sequestration may be determined at any time, adds, “It is not the annual office of a constable, or a tithingman: they are appointed yearly, and to serve for the year. That of parish clerk is a freehold; and it is upon that footing that a parish clerk gains a settlement.” I doubt, therefore, whether this be a public annual office within the statute. But, assuming that an office for more than a year might be so considered, it appears to me that in this case the pauper cannot be said to have executed the office. There is, indeed, a difference between the statutes 3 & 4 *W. & M.* c. 11. and 9 & 10 *W.* 3. c. 11. Under the last, it is necessary that the party to gain a settlement by serving an office, should have been legally placed in it; under the former, if the office has actually been executed, it is not necessary to enquire whether the placing was legal. But here the party was never in any way placed in the office. The case merely states that he performed the duties from a certain time. The only proper appointment would have been by the vicar. If, however, he had been elected by the parishioners and the vicar had afterwards assented, it might, perhaps, have been said that the service, under such election, was a good execution of the office. But here was not even a colourable appointment. The pauper only did the duties which a legal parish clerk, when appointed, would have done.—LITLEDAL J. It is not necessary to decided now

The office of parish clerk in *K.* being vacant, the pauper began, and continued for eleven years, to perform the duties, for which he received a yearly salary from the parish. It did not further appear how he came into the office. The appointment was in the vicar. Held, that as the pauper was not even colourably appointed or chosen, he did not by his service as clerk, execute an office within the parish so as to gain a settlement under 3 & 4 *W. & M.* c. 11. s. 6.

Quere, Whether the place of parish clerk be a “public annual office or charge” within that statute?

(a) 2 *Salk.* 536. 2 *Bott.* pl. 232.

(b) *Burr.* S. C. 746. 2 *Bott.* pl. 243.

whether or not the office of parish clerk be a public annual office within the statute, though I am rather inclined to think it is. But here the office was not executed. It is true, the pauper served twelve years, but whether it were twelve or one, makes no difference. The case merely states that, the office of parish clerk being vacant in *October* 1818, the pauper began then to perform the duties, and continued doing so down to the time of his removal. It shews no appointment, either by any person entitled by custom, or otherwise. If there had even been such an appointment as, though not legal in the first instance, might ultimately have been rendered so, perhaps a settlement might have been gained. But here was no appointment whatever, and, consequently, no execution of the office.—*TAUNTON J.* Whether this be an annual office or not, it is unnecessary to decide; and perhaps the necessity may never arise, because a parish clerk, duly appointed, has at any rate a settlement by freehold. It is not pretended in this case that the pauper was legally placed in the office within the terms of 9 & 10 *W. 3. c. 11.*, and it appears to me that he never was placed in it at all. He appears by the statement to have put himself into the office, and there done what would have been performed by a parish clerk, if one had been legally appointed; but he himself never was appointed, elected, or nominated; he merely did the duties and received the salary. I think this was not an execution of the office within the meaning of 3 & 4 *W. & M. c. 11.*, and that no settlement was gained.—Order of sessions quashed.

SETTLEMENT BY HIRING AND SERVICE.

Of Persons who may be hired as Servants.—2 Bott, pl. 266.

A. being enrolled as a substitute in the militia, hired himself for a year, and performed a year's service under that contract: Held, that as it did not appear that the pauper at the time of hiring informed the master that he was a militia man, no settlement was gained by serving a year under such contract.

120. *Rex v. Holsworthy*, *H. T. 7 & 8 G. 4.*—6 *B. & C.* 283.—Upon an appeal against an order of two justices, whereby *F. H. Trim*, his wife and child, were removed from the parish of *Thornbury*, in the county of *Devon*, to the parish of *Holsworthy* in the said county, the court of quarter sessions confirmed the order, subject to the opinion of this Court on the following case:—In the month of *May* 1819, the pauper being a single man, was enrolled as a substitute in the *South Devon* militia as a private to serve for the space of five years: and in *June* 1822, while he was still a member of the corps, being at *Plymouth*, he offered himself as a recruit to one *George M'Gie*, a private in the fifteenth regiment of infantry, who paid him a shilling for enlisting money, and took him to a serjeant of the regiment, and he was, after inspection by the surgeon, sworn in before the mayor of *Plymouth* as a recruit in that regiment for unlimited service. At the time of receiving the shilling from *M'Gie*, he informed him that he belonged to the *South Devon* militia, and was by him told not to mention it. He did not mention it either to the serjeant, the surgeon, or the commanding officer of the regiment. For this offence he was subsequently tried, convicted, and imprisoned. In *February* 1823, he being still a single man, hired himself for a year to one *Penwarden*, in the parish of *Holsworthy*, and performed a year's service in that parish under that hiring. The question for the opinion of the Court was, whether by

such hiring he gained any settlement in that parish.—BAYLEY J. I think this case does not admit of any doubt. It is not necessary to say whether a militia man may or may not gain a settlement by serving under a yearly hiring for a whole year, if at the time of making the contract he communicates to the party with whom he is contracting that he is in the militia, and therefore liable to be called out during the year. If the master chooses to engage the servant subject to the risk of his being called upon to perform duty as a militia man during the year, I do not see that there is anything illegal in such a bargain. It may be considered a conditional hiring, and if during the year the militia be not called out, a settlement may perhaps be gained by serving under it. But what is the contract of hiring in this case? The contract is one by which the master stipulates to have and the pauper stipulates to give his services for one whole year. There is no qualification or condition whatever in the contract, and if there were any, it ought to have been stated in the case, and cannot be inferred. I do not presume fraud, for the non-communication of the fact of the pauper's being in the militia may have arisen from his considering it wholly immaterial, from omission, or from other circumstances. Without, therefore, breaking in upon any case in which it has been decided that a militia man, who in his contracting of hiring stipulates for the time that he may be called upon to perform his duty in the militia, may gain a settlement by serving for a whole year under such a hiring, I think that the pauper not having communicated to the party whom he contracted to serve for the whole year that he was in the militia, cannot be said to have lawfully hired himself for a whole year within the meaning of the 3 *W. & M. c.* 11. s. 7., and that being so, I am of opinion no settlement was gained in the parish of *Holsworthy*.—HOLROYD J. I am of the same opinion. It is not to be presumed, without being stated in the case, that the pauper at the time of making the contract with his master, communicated to him that he was in the militia, and there is nothing on the face of the case to shew that such a communication was made. This case seems to fall within the principle laid down by Lord *Ellenborough* in *Rex v. Norton (a)*. He there says, "A variety of cases have occurred which have decided the question in the case of an apprentice; and this, not on the ground of its being an excepted case, or as standing upon any occult efficacy in the indenture of apprenticeship, but on the broad principle that one who has contracted a relation which disables him from serving any other without the consent of his first master is not *sui juris*, and cannot lawfully bind himself to serve such second master so as to gain a settlement by serving for a year under such second contract. In reason and principle it cannot make any difference whether he be originally bound by a contract of apprenticeship or by any other contract equally obligatory upon him, which disables him from binding himself to serve a second master." It is said that this case differs from that, because the militia not having been called out during the year, there was a year's service under a conditional hiring, but the objection is, that the pauper was not capable of making a contract so as to give the master a controul over his services during the whole year. Now no

(a) 9 *East*, 209. 2 *Bott*, pl. 264.

communication having been made to the master that the pauper had entered into a contract to serve in the militia, I am of opinion that this must be considered an absolute and not a conditional hiring for a year. And if that be so, then it is quite clear that the pauper was not capable of making an unconditional contract to serve for a whole year. I am therefore of opinion, in this case, that the pauper was not lawfully hired in the parish of *Holsworthy* for one whole year, within the meaning of the 3 *W. & M. c. 11. s. 7.*—LITLEDAL J. concurred.—Order of sessions quashed.

By an act of parliament, passed for draining certain fen-lands, 5000 acres of the said fen-lands were vested in certain trustees as a recompence to the undertakers; and it was enacted, that all the inhabitants that might be there-after upon any part of the lands so allotted to the trustees, and were not able to maintain themselves, should be maintained by the said trustees, their heirs, &c., and never become chargeable to all or any of the respective parishes wherein such inhabitants should reside: Held, that the lands so vested in the trustees were not thereby made extra-parochial; and that a party, by hiring and ser-

121. *Rex v. Crowland, M. T. 9 G. 4.*—8 *B. & C. 711.*—Upon an appeal against an order of two justices, whereby *Ruth Reed* and her two illegitimate children were removed from the parish of *Spalding*, in the parts of *Holland* and county of *Lincoln*, to the parish of *Crowland*, in the same parts and county; the sessions confirmed the order, subject to the opinion of this Court on the following case:—The respondents (the parish of (*Spalding*)) having proved that *Reed*, the husband of the pauper, gained a settlement in 1806, by hiring and service in the parish of *Crowland*, the appellants, (the parish of *Crowland*,) for the purpose of shewing a settlement in *Deeping Fen*, proved that *Reed*, the husband, served under a yearly hiring with one *William Patchett*, of *Deeping Fen*, from 1807 to 1808, and continued that service until 1809, in which latter year he was married to *Ruth* the pauper; that the said *William Patchett* during the time of such service was resident upon a part of *Deeping Fen*, and which is more particularly mentioned in a certain act of parliament of the 16 & 17 of *Car. 2.* for the draining of certain fens in *Lincolnshire*, as consisting of 5000 acres, and described in the said act of parliament as being set apart for an additional recompence to certain trustees therein named, over and above a third part of the said fens before assigned to one *Thomas Lovell*, and vested under the provisions of the said act of parliament in the said trustees therein mentioned, their heirs and assigns, in consideration of certain burthens and charges imposed upon the said trustees, their heirs and assigns, by the said act of parliament; that although at the present time there are no overseers for *Deeping Fen*, yet, nevertheless, that overseers were appointed for that place at intervals, but not regularly from the year 1790 to the year 1810, since which time no overseers have been appointed; and that until within the last eight or nine years a work-house was kept and maintained in the said *Deeping Fen*, for the residence and management of the paupers living in the said fen. Upon this evidence the court of quarter sessions confirmed the order of removal to *Crowland*, subject to the opinion of this Court upon the above facts, and directed that the said act of parliament should be considered as a part of the case (a).—BAYLEY J. It seems to me

(a) The act was entitled "An act for draining of the fen called *Deeping Fen*, and other fens therein mentioned;" and after reciting, "that in the 41 & 42 *Eliz.* one *Thomas Lovell* had undertaken to drain *Deeping Fen* and other fens; that one third part of the fen-lands had been allotted and decreed to him, as a recompence for so doing, by the commissioners of sewers; that the said decree had been ratified and confirmed by an act of parliament passed in the reign of *James I.*: that the said third part was by the said act ordained to be held by *Lovell*, his heirs and assigns; that he entered and became possessed thereof; that by some neglect in maintaining the banks, rivers, and sewers, the fens were returned to their ancient condition," enacted that the said decrees and acts of parliament should be repealed. It then further recited, that the assigns of *Lovell* had not fully effected the works,

that in this case the removal to *Crowland* cannot be supported. It appears that the pauper, who was residing in *Spalding*, had acquired a settlement in *Crowland*. But if *Crowland* was not bound to maintain him, the order of removal is bad. There is nothing in the act of parliament to shew that *Deeping Fen* is extra-parochial; and the presumption is, that, before the enclosure, it was in some parish. The provision relied upon in support of the order of sessions, is, "that all and every the inhabitants that may hereafter be upon any part of the said third part, or upon any part of the said 5000 acres, and are not able to maintain themselves, shall be maintained and kept by the trustees, &c. and never become chargeable in any kind to all or any the respective parishes wherein such inhabitant or inhabitant shall reside or dwell." The fair construction of that clause seems to me to be, that if a party does or has done in the 5000 acres an act which would give him a settlement in a parish, he shall be no longer maintained by the parish, but that the obligation of maintaining him is cast on the trustees. The land allotted is made, for this purpose, an incorporated district. The true construction of the clause is, not that it prevents a settlement from being obtained, nor that it prevents a person from doing that which will supersede a former settlement gained elsewhere, but that the burden of maintaining the poor instead of being thrown on the whole parish, is thrown on that particular part. I am of opinion, that in this case the order of removal to *Crowland* was bad, because a settlement was obtained in *Deeping Fen*.—LITLEDAL J. Generally speaking, every place is to be deemed part of a parish until the contrary be shewn. It ought, therefore, to be shewn, from the words of this act, that the 5000 acres are not part of a parish. That not being shewn, they must be taken to be part of a parish. If so, then the pauper gained a settlement in that parish of which the part of the 5000 acres in which this service was performed was parcel. The settlement in *Crowland* was thereby superseded. The case might be different if the 5000 acres were an extra-parochial place; because, in that case, a settlement could not

vice on those lands, gained a settlement either in the parish where that part of the allotted lands where the service was performed was situate, or in the allotted lands themselves, which, for this purpose, were to be considered an incorporated district.

and alleged for reason, that the allotments were not a sufficient recompence to answer the charge of a more perfect performance of the said work, and enacted that the persons therein named, their heirs and assigns, should be declared to be the undertakers for the draining of the said fens, and every of them, in trust for the purposes therein mentioned.

By the fourteenth section it was further enacted, that the said trustees, their heirs and assigns, or the survivor of them, their or any of their tenants, farmers, or ground-holders of any part of the said third part, or of the said fen, or of the said 5000 acres, should not have, or at any time thereafter, use, or claim any common of pasture or other commonage of pasturing in any part of the remainder of the said fens, nor any of them, nor in the *North Fen* of *Pinchbeck* and *Spalding*, nor any part thereof, by virtue or pretence of his or their residence there; but all and every the inhabitants that might thereafter be upon any part of the said third part, or upon any part of the said 5000 acres, and were not able to maintain themselves, should be maintained and kept by the said trustees, their heirs and assigns, and the survivor of them, and never become chargeable in any kind to all or any the respective parishes wherein such inhabitant or inhabitants should reside or dwell; any statute or law to the contrary thereof in anywise notwithstanding.

By a subsequent section, in consideration of the sums expended in and about draining the fens, and of doing the work hereafter to be done, the trustees, their heirs, &c., were to have in fee-simple the third part of all the fens formerly assigned to *Lovell*, &c., as also 3500 acres added and allotted by a decree of sewers, and 1000 acres out of that part of the fens formerly taken in for the queen's improvement, and 5000 acres more, to be taken proportionally out of the fens of *Kesteven* and *Holland*, next adjoining to the 3500 acres, upon the trusts thereafter mentioned.

have been gained there, and a pauper could not be removed thither. It may be another question, Whether the obligation on the trustees can be enforced? It is sufficient, however, to say, that the order of removal cannot be supported.—PARKE J. When the facts are understood, it is a very plain case. The question is, Whether the order of removal from *Spalding* to *Crowland* can be supported? If the pauper had subsequently obtained a legal right to be maintained in some other place, then it cannot be supported. Here it is clear, that he either had a legal right to be maintained by the parish of which that part of the 5000 acres in which the service was performed was parcel, or by the trustees named in the act of parliament. It is unnecessary to decide whether the parish or the trustees were bound to maintain him: either will do. It is sufficient, in order to decide the present case, that the pauper had a right to be maintained by the parish or by the trustees. That being so, the order of removal cannot be supported.—Order of sessions quashed.

A local militia-man hired himself at *Lady-day* 1811, to serve for a year, without communicating the fact of his being in the militia to the person with whom he so contracted. By the local militia act then in force, the 48 G. 3. c. 111. s. 15., it is provided, that no ballot, enrolment, and service under that act shall make void or in any manner affect any indenture of apprenticeship or contract of service between any master or servant, notwithstanding any covenant or agreement in such indenture or contract; and no service under that act, of any apprentice or servant, shall be deemed to be an absence from service:

122. *Rex v. Taunton St. James*, T. T. 10 G. 4.—9 B. & C. 831. —Upon appeal against an order of two justices, whereby *W. G. Palmer*, his wife and children, were removed from the parish of *Taunton Saint James* in the county of *Somerset*, to the parish of *Milverton* in the same county, the sessions quashed the order, subject to the opinion of this Court on the following case:—The pauper, aged about thirty-eight years, lived in the parish of *Langford Budville* in the said county, till he was about seven years of age, when he was bound apprentice by the parish officers to Mr. *John Locke* of that parish, yeoman, and served him in that parish till he the pauper was twenty-one years old. The pauper afterwards, at *Lady-day* 1811, hired himself as servant in husbandry for a year from that time to Mr. *Thomas Handford* of *Milverton*; and after serving him there three months, having at *Christmas* preceding volunteered into the local militia, he went out into actual service for three weeks, and then returned to Mr. *Handford's* service till *Lady-day* 1812, and then received his wages, after deducting for the three weeks he was absent in the militia. The pauper's agreement with Mr. *Handford* was for a year's service, at the wages of 11*l.* and his board and lodging, &c. The pauper did not tell Mr. *Handford*, when he first bargained with him, that he was in the militia; but told him a week or two afterwards; and he Mr. *Handford* said that did not signify, for the pauper could at the end of the year deduct for the time he was absent.—BAYLEY J. This case depends entirely on the construction of the fifteenth section of the 48 G. 3. s. 111. The statute of the 3 W. 3. c. 11. requires, that in order to gain a settlement by hiring and service, the party shall be lawfully hired for a year. It has been established by several decisions, that a party at the time of the hiring must be, *sui juris*, so as to be competent to give that species of service which he contracts to give. Upon this principle it has been held, that neither a deserter (a) from the king's service, nor an invalided soldier (b) having leave of absence, nor a militia-man, can lawfully hire themselves for a year so to gain a settlement. In *Rex v. Holsworthy* (c), a person who had been enrolled as a substitute in the militia hired himself for a year, and performed a year's service under

(a) *Rex v. Norton*, 9 East, 207. 2 Bott, pl. 264.

(b) *Rex v. Beaulieu*, 3 M. & S. 229. 2 Bott, pl. 265.

(c) 6 B. & C. 283. Ante, pl. 120.

that contract : and it was held, that as it did not appear that the pauper at the time of hiring, informed the master that he was a militia-man, no settlement was gained by a year's service under such contract. Now that decision applies to the present case, unless it be distinguishable from it by reason of the enactment contained in the 48 G. 3. c. 111. s. 15. That clause provides, " that no ballot, enrolment, and service under that act, shall extend to make void, or in any manner to affect any indenture of apprenticeship, or contract of service between any master or servant, notwithstanding any covenant or agreement in any such indenture or contract, and no service under that act of any apprentice or servant shall be deemed or construed or taken to be an absence from service, or a breach of any covenant or agreement as to any service, or absence from service, in any indenture of apprenticeship or contract of service, anything contained in any act or acts of parliament, or law or laws, or deed or indenture of apprenticeship, or contract of service, to the contrary notwithstanding." These words will undoubtedly apply to all indentures of apprenticeship, or contracts of service existing at the time of the ballot or enrolment, as well as to those made afterwards. The question is, whether they include all contracts whatever, or those only which were in existence at the time of the ballot or enrolment. Now, in order to ascertain the sense in which they are used in this act of parliament, we may fairly look to other acts of parliament relating to the same subject-matter ; and if we find these very words used in a restrained sense in those acts, we ought to construe them in the same sense in this act, for it is a fair rule of construction, that the same words in a statute in *pari materia* respecting the same subject, should receive the same meaning. No such words are to be found in the 42 G. 3. c. 90., but they are found in the 52 G. 3. c. 68. s. 63. ; and if, as used in that statute, they apply to contracts existing at the time of the ballot or enrolment, that is a legislative exposition of them, and they ought to receive the same construction in the 48 G. 3. c. 111. s. 15. Now, those words in the 52 G. 3. c. 68. s. 63. manifestly apply to contracts existing at the time of the ballot or enrolment, and not to contracts subsequently made. The sixtieth section enacts, that the enrolment of servants shall not vacate or rescind contracts between master and servant unless the local militia shall be called out, or unless the person enrolled shall leave the service for the purpose of being trained. That section applies to contracts existing at the time of the enrolment, for such contracts only could be vacated or rescinded by the enrolment. Section 63, is a transcript of the fifteenth section of the 48 G. 3. c. 111. It begins " provided always," and then proceeds in the same words. Now a proviso is something engrafted on a preceding enactment, and the proviso in the sixty-third section manifestly applies to the enactment in the sixtieth section, that the enrolment shall not rescind contracts made between master and servant. But that enactment applied to contracts existing at the time of the ballot or enrolment. The words of the proviso, therefore, apply to the same species of contracts. Then that being the fair meaning of the words used in the 52 G. 3. c. 68., they ought to receive the same construction in the 48 G. 3. c. 111. s. 15., and giving them that construction, there is nothing in that statute enabling such a person to make an absolute contract for a year so as to gain a settlement. The clause ends with a pro-

Held, that that section of the statute applied only to contracts existing at the time of the ballot or enrolment, and not to contracts subsequently made ; and, therefore, that the pauper, at the time when he hired himself, was not capable of making an absolute contract to serve for a year, and, consequently, that he was not lawfully hired for a year, and gained no settlement.

viso as to service; that may make the service good, but my opinion is not founded on the description of service, but upon the want of capacity to contract. I think that the pauper was, at the time of the hiring, under a disability to contract to perform the service which he undertook to perform, and, therefore, that no settlement was gained in the parish of *Milverton*.—LITLEDALE J. It is a general principle of law, that if a man enters into a contract, he ought either to be in a situation to perform it, or to inform the person, with whom he contracts, of his disability. This is a duty founded upon moral principle, and is due from one member of society to another. If the words in an act of parliament be capable of two meanings, and one construction will have the effect of enforcing the performance of this moral obligation and the other will not, that construction should be adopted which will have the effect of enforcing it. Now, it is contended, that the words in the 48 G. 3. c. 111. s. 15. “no ballot, enrolment, and service under this act shall extend to make void, or in any manner to affect any indenture of apprenticeship or contract of service between any master or servant, notwithstanding any covenant or agreement in any such indenture or contract,” &c. extend not only to contracts existing at the time of the enrolment, but to contracts subsequently made. I think the words “make void,” *ex vi termini*, apply to contracts in esse. But supposing that to be doubtful, then calling in aid the principle that a man is bound to disclose any thing which may disable him from performing his contract, I will, in order to give effect to that principle, give the words a limited construction, and hold that they extend only to contracts existing at the time of the ballot or enrolment. Putting that construction on those words, a party, in order to gain a settlement by a contract of hiring made after ballot or enrolment, must disclose his disability to the person with whom he contracts. This would be the construction I should put upon those words if the 48 G. 3. c. 111. had stood by itself. But the local militia act, 52 G. 3. c. 38. s. 63., contains an enactment in the same words, and by the sixtieth section of that statute those words are confined to contracts between masters and servants existing at the time of the ballot or enrolment. Now, where in two statutes in *pari materiâ* the same words occur, and in one of them the meaning is clear and in the other doubtful, I think we ought to call in aid the meaning put upon those words by the legislature in the statute where they are not ambiguous, and give them the same meaning in the other statute. We violate no rule of construction, by giving to the same words in two acts of parliament relating to the same matter the same meaning. I think, therefore, that if there be any ambiguity in the words of the fifteenth section of the 48 G. 3. c. 111., it is removed by the legislative exposition put upon the same words in the 52 G. 3. c. 68., I think, therefore, there was no lawful hiring for a year.—PARKER J. The question is, Whether at *Lady-day* 1811, there was a lawful hiring for a year. Assuming that the subsequent conversation between the master and servant amounted to a second hiring, it was not for a year, but for a less period. To constitute a lawful hiring the party must have a power to contract to serve for the period during which he agrees to serve. *Rex v. Holsworthy* (a), shews that if a party is under a dis-

(a) 6 B. & C. 283. 2 Bott, pl. 265.

ability, he may, by disclosing it to the person with whom he contracts, make a conditional hiring. But if he does not disclose it, it is an absolute contract which he is not capable of entering into, and therefore not a lawful hiring. Here there was no disclosure. Then the only question is, Is there any enactment in the 48 G. 3. c. 111. giving a local militia-man a power to make an absolute contract of hiring? It cannot be intended that the legislature meant to give such a power, for they might thereby enable a party by law to commit a fraud: the master would contract on the supposition that the party with whom he contracts had power to bind himself to serve for a year; the latter knowing all the time that he had not. But on the other hand, it might properly be provided that a contract made *bonâ fide* while the party was a free man, capable of contracting, should not be avoided by reason of his subsequently becoming a militia-man. The statute does not in terms enact that an enrolled person shall be *sui juris*. The words of the fifteenth section of that statute apply to contracts actually entered into at the time of the ballot or enrolment. No such power, therefore, is given by express words, or by necessary implication. Coupling the fifteenth section with the twenty-fourth, it appears to me doubtful whether a volunteer and a balloted man are thereby placed precisely in the same situation. But assuming that they are, all that the legislature says is, that if a master contracts with a freeman the master must take his chance in case of a ballot, and shall not contract against the chance of ballot; for such contract is made void. But there is no provision that a party shall have the same capacity to contract as if he was not a local militia-man. No power therefore is given to enter into an absolute contract to hire himself for a year. Here the pauper entered into an absolute contract when he had no power to do so. There was no lawful hiring for a year, and no settlement was gained. — Order of sessions confirmed.

Of the Contract of hiring. — 2 Bott, pl. 287.

123. *Rex v. Little Coggeshall, E. T. 57 G. 3. — 6 M. & S.* 264. — Upon appeal, the sessions confirmed an order for the removal of *Thomas Raven*, his wife, and three children from the parish of *Great Tey*, to the parish of *Little Coggeshall*, both in the county of *Essex*, subject to the opinion of this Court upon the following case: — The pauper, at *Michaelmas* 1806, was hired by one *Blackbone*, of *Little Coggeshall*, as a servant in husbandry, for a month upon liking, and if he suited his place he was to continue in it during the year, and to have three guineas as wages. The pauper entered upon his service at that time, and, when he had served the month, his master said that he suited him, and if he liked he might continue with him, but added that he must leave his place a fortnight before the end of the year, in order, that as he did not belong to the parish, he might not be any incumbrance to it, to which the pauper made no answer. He continued to live with *Blackbone* until fourteen days he must leave his place a fortnight before the end of the year, in order that he might not be an incumbrance to the parish, and he continued till fourteen days before the end of the year, when his master told him his time was up, and, as he had behaved well, he would pay him the whole wages, which the master accordingly did, and the pauper quitted the house, and never returned, but went to his father's: *Held, that the pauper did not acquire a settlement under this hiring and service, for there was no hiring for a year.*

Where a pauper was hired as a servant in husbandry for a month upon liking, and, if he suited his place, to continue during the year, and to have three guineas wages, and when he had served the month, his master said he suited, and if he liked, might continue, but

before the expiration of the year, at which time *Blackbone* called him, and told him that his time was up, and as he had behaved himself well, he (*Blackbone*) would pay him the whole of his wages, which he did, and then desired him to go home to his father's, where he would probably hear of another place. The pauper made no objection to what his master said, but accepted his wages, quitted the house, to which he never returned, and went to his father's. The sessions were of opinion that the pauper was absent during the last fourteen days of the year under a dispensation from service. — Lord ELLENBOROUGH C. J. The point on which the settlement fails is, that there was not any hiring for a year. I should be glad to know how the master could have maintained any action against the servant for not serving him the year. He says, at the end of the month of probation, that he would continue him, but he must go away a fortnight before the end of the year, in order that he might not be an incumbrance to the parish. This, therefore, was a stipulation, by way of condition, that they should part within the year. — BAYLEY J. With respect to what has been said of the original contract between these parties, I would ask, whether at the end of the month the pauper had a right to insist upon his master's continuing him the year. — Order of sessions quashed.

124. *Rex v. Great Bowden*, T. T. 8 G. 4. — 7 B. & C. 249.

Upon a special case, the court of quarter sessions found, that a pauper hired himself as ostler to an innkeeper, that no earnest or wages were given, but he was to have what he could get, as ostler, and he lodged and boarded in his master's house, and that either the master or servant might have determined the service when they pleased: it was held, that, upon this finding, this latter stipulation must be taken to have been part of the contract between the parties, and, consequently, that there was not any general or yearly hiring,

— Upon appeal against an order of two justices, whereby they removed *J. Harding*, his wife, and children, from the hamlet of *Sutton*, in the parish of *Castor*, in the county of *Northampton*, to the parish of *Great Bowden*, in the county of *Leicester*, the sessions confirmed the order, subject to the opinion of this Court on the following case:—The pauper, *J. Harding*, came to one *Hamshaw*, an innkeeper, residing in the parish of *Great Bowden*, and asked for a place. *Hamshaw* had no objection, and put him on as an ostler, but said that he did not mean him to have a settlement, as the parish was very particular. No earnest or wages were given, but the pauper was to have what he got as ostler. He had his lodging and his board in his master's house. The pauper could have left at any time he pleased, or the master might have turned him away at any time. The pauper lived with *Hamshaw* as ostler under these terms about a year and a half. The sessions were of opinion that this was a general hiring, followed by a service of above a year, and that the master's remarks at the time of hiring could not prevent the pauper from gaining a settlement. — BAYLEY J. This clearly would be a general hiring, unless it were a term engrafted upon the contract that the pauper might leave or that the master might turn him away at any time. It is said that this is a mere conclusion drawn by the sessions from the evidence, and that it was not a condition engrafted on the contract, but inasmuch as a general hiring has been held to be a hiring for a year, and as in a yearly hiring there is no such condition implied by law that either party shall be able to determine the service at any time, I think we must take it upon the finding, that it was part of the contract that the parties should be at liberty so to do in this case, and if that be so, then the cases of *Rex v. Christ Parish, York*, (a) and *Rex v. Trowbridge*, (cited by Bayley J. in *Rex v. Christ Parish, York*, are decisive authorities to shew that the

(a) 3 B. & C. 459. 2 Bott, pl. 285.

contract in this case was not a hiring for a year. No settlement, therefore, was gained by the service under it, and the order of sessions must be quashed.—HOLROYD and LITLEDALÉ Js. concurred.—Order of sessions quashed.

125. *Rex v. Sandhurst, M. T. 8 G. 4.—7 B. & C. 557.*—Upon appeal against an order of two justices, whereby *T. Slark*, his wife and children, were removed from the parish of *Easthamsted* to the parish of *Sandhurst*, both in the county of *Berks*, the sessions confirmed the order, subject to the opinion of this Court on the following case:—The pauper, *T. Slark*, being unmarried, and without any child, was hired on the 13th of *May*, 1813, as a servant on the establishment of the Royal Military College at *Blackwater*, in the parish of *Sandhurst*. By a warrant under the hand of his late Majesty, bearing date the 27th of *May*, 1808, all matters relating to the interior regulations and economy of the establishment were placed under the cognizance of a collegiate board, consisting of the governor and several other persons mentioned in the warrant. Certain regulations for men-servants hired for the Royal Military College are entered in a book kept for that purpose, containing, among other rules, the following: “The servants are to obey all orders they may receive from the officers of the institution, the staff-serjeants, and the surveyor. They are allowed wages at the rate of sixteen shillings per week, with one dress and one undress suit of clothes per annum, subject to such stoppages as may be ordered, but which shall be paid up every three months, after deducting for the charge of breaking furniture, crockery, &c. belonging to the college, that may have been committed during that period. Should a servant wish to quit the college, he must give one month’s previous notice; but should the college see reason to be dissatisfied with his conduct, it retains the power of dismissing him at a moment’s notice.” The customary mode of hiring such servants was by reading the rules over to them at the time of hiring, and then requiring their signature to them, in witness of their agreement to serve on the terms prescribed. The pauper was hired by Colonel *Butler*, the lieutenant-governor, one of the officers constituting the collegiate board, by whom the servants were usually hired. He heard the above regulations read at the same time by the quarter-master, and signified his assent in the usual manner, by subscribing his mark to them. He remained in the service, and received his wages as above agreed on, for two years and a half before he married. He lived and slept in the body of the college, and was employed in making the beds of the gentlemen cadets, assisting in sweeping and cleaning the rooms, and various other occupations for the service of the college exclusively, as directed by the officers of the college. He was discharged with several other public servants of the college, without notice, in the year 1819, on a reduction of the establishment by order of government. The body of the college is exclusively appropriated to public uses for study and lodging of the gentlemen cadets, and is exempt from poor-rates, as being a public building. The pauper and thirty-two other persons were employed in the same service, not as the private servants of any individual, but as the public servants of the establishment, to obey generally the officers of the college: and they were paid by the pay-serjeant, out of the funds

and that no settlement was gained by serving under it.

A pauper was hired by the commanding officer of a royal military college to act as a servant in that establishment. By the terms of the hiring, he was to obey all orders of the officers of the institution, and to be allowed weekly wages, and if he wished to quit the college, he was to give one month’s notice; but should the college be dissatisfied with his conduct, it retained the power of dismissing him at a moment’s notice: Held, first, that this was a good hiring for a year, although either party might determine it before the expiration of the year; secondly, that a settlement was gained by such hiring, although it was not to a private person, the statute 3 W. & M. c. 11. s. 7. only requiring a lawful hiring, and a service under it.

supplied for the maintenance of the college; and they were not returned to the collector of the taxes, nor paid for, nor assessed as servants. The pauper, *T. Slark*, afterwards married his present wife, and the children removed with him are the issue of the marriage. Upon these facts, the sessions found that there was a general hiring sufficient to confer a settlement, if a settlement could be acquired by such hiring and service in a public establishment like the college; and submitted this question for the opinion of this Court, Whether the pauper, *T. Slark*, acquired a settlement by such hiring and service in the college?—BAYLEY J. delivered the judgment of the Court. In this case the question is, Whether the pauper had acquired a settlement in consequence of having been hired into the establishment at *Sandhurst*, and having served there for a year. That establishment is in the nature of a collegiate board, and the terms on which the servants are hired are, that “they are to obey “all orders they may receive from the officers of the institution.” They are allowed at the rate of 16s. per week, with one dress, &c., per annum, subject to such stoppages as may be ordered, but which are to be paid up every three months, after deducting for the charge of breaking furniture, &c.; and should a servant wish to quit the college, he must give one month’s previous notice, but should the college see reason to be dissatisfied with his conduct, it retains the power of dismissing him at a moment’s notice. The sessions thought that this was a general hiring, so as to constitute a hiring for a year; but they entertained a doubt whether the hiring, being by the officer of the establishment, was sufficient to confer a settlement on the individual hired. Another point raised in the discussion was, whether the power reserved in the original contract, of putting an end to the service by a month’s notice on the part of the servant, or at a moment’s notice by the College, should they be dissatisfied with him, prevented this from being a hiring for a year. On this point we are satisfied that this is to be deemed a yearly hiring, notwithstanding the power of determining it in the mean time, as that power was not exercised before the expiration of the year. It is like the case of a defeasible contract, (similar to that in *Rez v. Hertsmontceaux* (a), to be determined on some contingency; but that contingency not having happened, and the contract not having been defeated during the year, it enures after the year’s service as a yearly hiring. But it was also said, that as this hiring was by the officer of the establishment, and as the party was to serve the officers of the establishment, and the young gentlemen supported at it, and was not hired by or to serve a private individual that distinguished this from the ordinary cases of hiring, and prevented a settlement from being gained. The stat. 3 W. & M. c. 11. s. 7., only contemplates a lawful hiring and service under it; it does not say by whom the hiring is to be made. It has been urged in argument, that the party is to be considered as holding an office, not as a servant. But a man who does all the menial offices of a servant, and is at the command of the persons in the establishment, is a servant, and not an officer. We think that the legislature did not mean to make any distinction between one description of hiring and another by a particular description of persons; all that it required was, that the hiring should be lawful,

(a) Ante, pl. 108.

and that there should be a service under it. Here there was a lawful hiring and a service under it in the parish of *Sandhurst*, and therefore a settlement was gained.—Order of sessions confirmed.

126. *Rex v. Whitnash*, *M. T.* 8 *G.* 4.—7 *B. & C.* 596.—Upon an appeal against an order of two justices, whereby *J. Edgington*, and his family, were removed from the parish of *Rudford Semele*, to the parish of *Whitnash*, both in the county of *Warwick*; the sessions confirmed the order, subject to the opinion of this Court on the following case:—The pauper who was legally settled by parentage, in the parish of *Rudford Semele*, was offered by his father to one *Cook*, of the parish of *Whitnash*, on *Sunday*, the 12th *October* 1817, as waggoner's boy, and was hired by *Cook* on that day for a year. The pauper went into *Cook's* service on *Tuesday*, the 14th, and served him under the above mentioned hiring, in the parish of *Whitnash*, until the 12th of *October* in the following year. *Cook* was a farmer, residing in the parish of *Whitnash*, and has been dead twelve months. The pauper worked for different persons in the parish *Rudford Semele*, as a labourer in husbandry, both before and after the hiring in question.—*BAYLEY J.* The act of parliament ought to be so construed as to advance the objects contemplated by the legislature, but not so as to make every work or business done on the Lord's day illegal. The words of the statute are, "that no tradesman, artificer, workman, labourer, or other person whatsoever, shall do or exercise any worldly labour, business, or work, of their ordinary callings, upon the Lord's day." Now if the legislature had intended to embrace every description of persons, and every species of business, it would not have been necessary to make an enumeration of several classes of persons exercising particular descriptions of labour or business. It would have been sufficient to say that no person whatever should do any work or business on the Lord's day. If the enactment had been intended to be general, the legislature would have used general words. It has been argued that the words "worldly labour, business, or work of their ordinary callings," are to be construed disjunctively. The true construction of the clause appears to me to be, that the persons there mentioned shall not, on the Lord's day, do or exercise any labour of their ordinary calling, any business of their ordinary calling, or any work of their ordinary calling. The hiring of a servant seems to fall properly within the meaning of the word *business*. And if the true construction of the act be, that every description of business is prohibited, all contracts whatever made on a *Sunday* will be void. I think that that was not the intention of the legislature. Religion and piety do not require that every moment of every *Sunday* should be devoted to the performance of religious exercises. To a reasonable degree, a man may on that day consider his own condition and that of his neighbour, and may do acts beneficial to himself, and calculated to promote the comfort of his neighbour. I am of opinion that this act of parliament does not prohibit labour, business, or work of every description; and that the hiring of a servant by a farmer on a *Sunday* is not work or business within the meaning of the act of parliament. I also think that it is not labour, business, or work of the ordinary calling of the farmer. He, like every other person who requires servants, must hire them. The true construction of the words "ordinary calling," seems to me to be, not that without which a trade or business cannot be carried on, but that

The statute 29 *Car. 2. c. 7. s. 5.* enacts, that no tradesman, artificer, workman, labourer, or any person whatsoever shall do or exercise any worldly labour, business or work of their ordinary calling on the Lord's day, and subjects parties offending to a penalty: Held that this statute only prohibits labour, business or work done in the course of a man's ordinary calling, and therefore a contract of hiring made on a *Sunday* between a farmer and a labourer for a year was valid, and that a service under it conferred a settlement.

which the ordinary duties of the calling bring into continued action. Those things which are repeated daily or weekly in the course of trade or business are parts of the *ordinary calling* of a man exercising such trade or business, but the hiring of a servant once in the year does not come within the meaning of those words. For these reasons, I am of opinion that the contract of hiring in this case was valid, and consequently that a settlement was gained.—HOLROYD J. I also think that the contract of hiring was not void by reason of its having been made upon a *Sunday*. The great object of the statute was to prevent persons carrying on their trade and ordinary occupations and callings on the Lord's-day. And, although it may perhaps be desirable that other secular concerns (besides those expressly mentioned in the statute) should be comprehended in it, we must not extend the words of the statute beyond their natural import. Here the legislature enacts, not that no person whatever, but that "no tradesman, artificer, workman, labourer, or other person whatsoever," shall do any work, &c. The words "other person whatsoever," must, according to the general rule, that preceding particular words controul subsequent general words, be construed to mean persons ejusdem generis with those previously mentioned. All the persons previously mentioned exercise an ordinary calling. The statute, therefore, in substance enacts, that persons having an ordinary calling, shall not do any worldly labour, business, or work of *their* ordinary calling. I think, therefore, that the prohibitory clause must be confined in construction to worldly labour, work, or business of their ordinary calling. Unless, indeed, it be perfectly clear that it extends to all worldly business, that must be its construction, because this is a penal enactment, for every contract which is void within the first part of the clause, subjects the parties making it to a penalty. It must, therefore, be construed strictly. It seems to me, that the hiring of a servant by a farmer, although servants may be useful or even necessary for carrying on his ordinary calling, is not a part of it. If a farmer sold his corn, or his servant ploughed his land, those would be parts of their ordinary callings. I think the making of a contract with a person who is to assist another in his ordinary calling does not come within the meaning of the words "worldly labour or business, or work of his ordinary calling," so as to subject the parties to the contract to a penalty, or so as to avoid the contract.—LITLEDAL J. The words "of their ordinary calling," extend not only to the word "work," which immediately precedes it, but to the two preceding words "labour and business." The word "worldly," also extends to the three substantives, "labour, business, or work." This is consistent with the context of this clause. It begins with mentioning tradesmen, artificers, labourers, or other persons. That evidently implies that they were persons who had an ordinary calling. If it had intended that no person should do any work on a *Sunday*, it would have used different language. The words *other persons*, mean persons ejusdem generis with those before mentioned, but who, perhaps, might not strictly be included in those words. The act of parliament seems to me to be confined to persons having an ordinary calling; and if that be so, then it prohibits such persons from doing any worldly labour, business, or work of *their* ordinary calling on a *Sunday*. If it embraced every description of worldly labour, business, or work, the consequence would be that

almost every person in every rank of life would incur the penalty. The subsequent provision that no person shall expose any wares, &c., shews, that this statute was intended to be confined to persons exercising their ordinary calling on a *Sunday*. The hiring a servant is no more a part of the ordinary calling of a farmer, than it is of any other person who requires the assistance of servants. For these reasons I am of opinion that this was a valid hiring, and that the pauper gained a settlement by service under it.—Order of sessions confirmed.

127. *Rex v. Crediton*, T. T. 1 W. 4.—2 B. and Ad. 493.—On appeal against an order of removal, whereby *Joseph Middlewich*, his wife and children, were removed from the parish of *St. Mary Major*, in the city and county of the city of *Exeter*, to the parish of *Crediton* in the county of *Devon*, the respondents proved a settlement by hiring and service in *Crediton*. The appellants then set up a subsequent hiring and service in a third parish, *St. Edmund's*. The sessions confirmed the order, subject to the opinion of this Court on the following case, respecting the alleged settlement in *St. Edmund's*.—The pauper agreed with one *West*, a sawyer of the parish of *St. Edmund's*, in the city of *Exeter*, for a twelvemonth, to learn sawing, and was to have 7s. 6d. out of every 20s. earned by his master and himself. He served out that year, providing his own board and lodging. At the end of the year he made a new agreement with *West* for another year, under which he was to receive 8s. out of every 20s. earned by his master and himself. Nothing was said about *Sundays*, or the hours he was to work, but he was occasionally absent without permission from *West*. He lived out the second year with *West* in the parish of *St. Edmund's*.—LITLEDAL J. It seems to me the sessions came to the right conclusion. In all the cases cited, there was some work to be done, though there was a contract to learn. This case falls within *Rex v. Bilborough (a)*. There one *Smith*, by parol, agreed with the pauper to teach him to make stockings during the year, for which *Smith* was to receive two guineas, and the pauper was to have his earnings, paying the master for the use of the frame, &c. and it was held that no settlement was acquired by living out the year under the agreement, for the pauper never contracted to serve the master, the only agreement was that the master should teach the pauper for a year. In *Rex v. St. Mary Kidwelly*, (b) the father of the pauper agreed by parol to give a shoemaker a guinea a week for teaching his trade to the pauper for twelve months, and it was held that agreement created the relation of teacher and scholar, and not that of master and servant. In *Rex v. The Hamlet of Walton* (c) the pauper was put out to a barber for one year to learn to shave, and the barber was to have the benefit of the boy's work, and received some money for teaching, and the boy lived with him for a year; it was held that the boy was in the situation of a scholar, and not of a servant. On the other hand, in *Rex v. Hitcham* (d) where the pauper agreed to let himself to his brother, who was a carpenter, for a year, and was to receive no money by way of wages, but his brother was to teach him as much as he could of the trade during the time, and provide him with meat, drink,

A pauper agreed with a sawyer for a twelvemonth to learn sawing, and was to have 7s. 6d. out of every 20s. earned by his master and himself; he served out the year in the parish of A., providing his own board and lodging; at the end of the year he made a new agreement for another year, at an increased allowance; and he lived out the second year with his master in A.: Held, that he did not thereby gain a settlement in A., inasmuch as the principal object of the agreement between him and his master being, that he should learn and his master teach him sawing; it was a defective contract of apprenticeship.

(a) 1 B. & A. 115.

(c) *Carth.* 400. 2 *Bott*, pl. 267.

(b) 2 B. & C. 750.

(d) *Burr.* S. C. 489.

washing, and lodging, and the pauper was to do all his brother's business in the farming way: that was clearly held to be a contract for service, and a hiring for a year. Here, as by the express terms of the contract, the pauper was to learn, an obligation on the part of the master to teach must be implied. The agreement for the second year is substantially the same as that for the first. The only difference is that the wages are increased.—**PARKE J.** I think the sessions have put the right construction on this contract. To gain a settlement by hiring and service, the pauper must have hired himself to serve for a year. Here the relation of master and apprentice, not that of master and servant, was created. The case is not distinguishable from *Rex v. Bilborough*. There the contract was that the master was to teach the pauper; here it is that the pauper shall learn; but if the one is to learn, it is to be implied that the other is to teach. The only difference between the agreement for the first, and that for the second year, is that the wages were different; in other respects the contracts are the same.—**TAUNTON J.** I am of opinion that the relation contemplated in this case was, that of master and apprentice. The only difference between the first and second agreement, is in the sum to be received by the pauper. What then is the purpose for which the pauper agreed to contract any relation with *West*? It is stated expressly in the agreement to *learn* sawing. I take the true distinction in these cases to be this: where teaching on the part of the master or learning on the part of the pauper, is not the primary, but only the secondary object of the parties, that will not prevent (where work is to be done for the master) the contract being considered one of hiring and service. In all the cases cited, where the contract was so considered, it appeared that the pauper agreed to work for his master, and the master undertook to teach him the particular trade in which he was conversant, but the teaching and learning were incidental, and therefore it was held to be a contract of hiring. But where teaching and learning are the principal object of the parties, though there was a service, the contract is to be considered one of apprenticeship.—Order of sessions confirmed.

Of general Hiring.—2 Bott, pl. 304.

A hiring at so much per week, a month's wages or a month's warning, is a hiring for a year.

128. *Rex v. St. Andrew in Pershore*, *M. T.* 9 *G.* 4.—8 *B. & C.* 679.—Upon an appeal against an order of two justices, whereby *W. Horton*, his wife, and two children, were removed from the parish of *St. Andrew in Pershore*, in the county of *Worcester*, to the parish of *Moreton in Marsh, Gloucestershire*, the sessions quashed the order, subject to the opinion of this Court on the following case:—The pauper, *W. Horton*, was hired to one *Fieldhouse*, a stage-coach proprietor, to serve him as horsekeeper, and to look after his coach horses at *Moreton in Marsh*, at 1*l.* a week. The terms of the hiring were a month's warning, or a month's wages. There was no further mention of the time during which the pauper should serve. The pauper continued to serve under this contract at *Moreton in Marsh* between two and three years. The question for the opinion of the Court was, Whether the pauper, *W. Horton*, gained a settlement under this hiring and service in *Moreton in Marsh*.—**BAYLEY J.** I think that the sessions had not any premises to warrant the conclusion to which they came in this case. If the reservation of

weekly wages be the only circumstance from which the duration of the contract can be collected, the presumption is, that it is to continue for a week only. In this case, the stipulation for a month's wages, or a month's warning, rebuts the presumption of a weekly hiring. It was thence manifest that it was intended that the service should continue for a longer period than a week. It then became a hiring unlimited in duration, in which case the law implies a hiring for a year.—LITLEDALE J. The stipulation for a month's wages, or a month's warning, shews clearly that the contract was for a longer period than a week. That being so, and no precise time for its duration being fixed, it was a contract for an indefinite period; or, in other words, a general hiring for a year. I think that in this case, there were not premises to warrant the sessions in deciding that there was not a yearly hiring.—PARKE J. concurred.—Order of sessions quashed. (a)

129. *Rex v. Road*, T. T. 1 B. & Ad. 362.—Upon appeal against an order of two justices, whereby *T. Tipper*, and his wife and children, were removed from the parish of *Kingswood* in *Wiltshire*, to the parish of *Road* in *Somersetshire*, the sessions confirmed the order, subject to the opinion of this Court on the following case:—About *June*, in the year 1812, the pauper, then about fourteen years of age, was placed by his father with *S. Long*, a collier at *Kingswood*. The pauper worked as a shearman, slept on *Long's* premises, and received 5s. 6d. a week. After he had worked as a shearman about eight months, *S. Long* asked him to go to spinning for the residue of his year. He did go to spinning, and from that time worked by the pound; and instead of being paid as before, was paid at so much by the pound weight of material spun. He never took account when the year ended, but stayed with *Mr. Long*, as a spinner, eleven or twelve years. He worked from six in the morning to seven in the evening generally, but sometimes till eleven or twelve at night, when *Mr. Long* paid him 6d. as an acknowledgment for unseasonable hours, but he never had any demand for extra work. The question for the opinion of the Court was, Whether the pauper gained a settlement by hiring and service in *Kingswood*?—BAYLEY J. It seems to me that this case depends upon a question of fact, which the sessions ought to have decided, and which they still ought to decide. The original bargain between the master and the father of the pauper is not stated; it does not therefore appear whether the wages were reserved weekly or not. After the pauper had continued in the service about eight months, the nature of his employment and the mode of payment were varied; it should be ascertained whether or not at that period the time of payment was varied. It might also turn out, that after serving for several years at weekly wages, according to the new mode of calculation, the pauper quitted in the middle of the year without any notice; the sessions might from that circumstance fairly infer, that there was not a yearly hiring. I think the case should go back to the sessions.—LITLEDALE J. I think this case should go back to the sessions, in order that they may, from the facts produced in evidence, draw the conclusion, whether or not there was any hiring for a year. It rather appears to me that the hiring was in the first instance by the week, but that that hiring ended at the ex-

A pauper, being fourteen years of age, was placed by his father with a collier, worked as a shearman, slept on his master's premises, and received 5s. 6d. a week. After he had worked as shearman about eight months, his master asked him to go to spinning for the residue of his year; he did go to spinning, and from that time worked, and was paid, by the pound; and he staid with his master eleven or twelve years. The court of quarter sessions having confirmed the order of removal, subject to a case stating these facts, this Court held that it was a question for the sessions to determine, whether there was a yearly hiring, and

(a) See *Rex v. Hampreston*, 5 T.R. 205. *Rex v. Great Yarmouth*, 5 M. & S. 114.

sent the case back to them for the purpose of deciding that point.

piration of the first eight months; that he was then hired for the residue of the year, and that he continued afterwards upon a yearly hiring; but that is entirely a question for the sessions.—*PARKE J.* The case must go back to the sessions, in order that they may decide whether there was a general hiring, or any express hiring for a year. It appears to me that there is sufficient stated in the case to decide that there was a general hiring at the end of the first eight months. The sessions seem to have thought that there was a weekly hiring at first, and to have overlooked the hiring which took place at the end of the first eight months.—Case sent back to sessions.

Of particular or special Hiring.—2 Bott, pl. 339.

The father of a pauper was about to put him out to service, when it was suggested to him by A., a carpenter, that it would be better for the pauper to learn his (A.'s) trade, instead of going to service; and A. afterwards hired the pauper to learn his trade, and to do any other work, as well as that of a carpenter. The pauper went to A. and served him for five years, living during that time with his parents, who provided him with victuals, and part of his clothing, the remainder being provided by A. The pauper did any work his master ordered him to do, and at the end of that time he agreed to work for the master as a journeyman at weekly wages. The sessions having found that this was a defective contract of appren-

130. *Rex v. Combe, E. T. 9 G. 4.*—8 B. & C. 82.—Upon an appeal against an order of two justices, whereby *J. Davies* the younger, his wife, and children, were removed from the township of *Presteign*, in the county of *Radnor*, to the township of *Combe*, in the county of *Hereford*; the sessions considering that the contract between the pauper and one *Cole* was a defective contract of apprenticeship, and not one of hiring as a servant, and that its sole object was the instruction of the pauper in the trade of a carpenter, confirmed the order, subject to the opinion of this Court on the following case:—The pauper, *J. Davies*, had a derivative settlement from his father in the township of *Combe*. *J. Davies* the elder, the pauper's father, sixteen years ago, when the pauper was about fourteen years of age, was about to put him out to service, and took him to *Presteign*, with the intention of hiring him, but did not hire him. Shortly afterwards, one *James Cole*, a carpenter, residing in *Presteign* (the brother of the pauper's mother), suggested that it was better for the pauper to go and learn his (*Cole's*) trade of a carpenter, instead of going to service. At length *Cole* hired the pauper from his mother to learn his trade. The pauper was to do any other work as well as that of a carpenter. *Cole* was to find the pauper part of his food and part of his clothing, but he was to lodge at his father's house. In pursuance of this contract the pauper went to *Cole* and served him for five years, lodging in the township of *Presteign* with his parents, who provided part of his clothing and victuals. During the whole five years the pauper did any work *Cole* put him to do, as well as working at the trade of a carpenter. In the second or third year after the pauper had entered upon his service, a conversation took place between the parties about indentures being drawn to bind pauper to *Cole* until the age of twenty-one, in order to exempt the pauper from the militia. The indenture was to be drawn to bind the pauper till he was twenty-one, but it was understood that he was to be free at the end of five years, to be computed from the time of the original contract; no indenture was drawn, nor any thing afterwards said upon the subject. At the expiration of the five years, (that being understood by the parties to be the termination of the original contract, whatever was the nature of it,) the pauper agreed to work with his uncle *Cole* as a journeyman carpenter, under a weekly hiring, and to be paid weekly wages, the pauper boarding and clothing himself; and he was to be at liberty to go away at the end of any week; and he continued with *Cole* under these terms (except upon one or two occasions varying the amount of the weekly wages) for

nine or ten years. — Lord TENTERDEN C. J. delivered the judgment of the Court. The question in this case is, Whether the pauper served in *Presteign* as an apprentice, or as a yearly servant? It is clearly established by the authorities, that if an apprenticeship was only contemplated by the parties, and there was an imperfect contract of apprenticeship, the service will give no settlement. The case of the *King v. St. Margaret, King's Lynn (a)*, was relied upon in support of the order of sessions. There a master shoemaker made a proposal to a poor woman to take her son to learn his business. The son was to serve him for four years, to board and lodge with his mother, and to have half what he earned. No indentures were executed on account of the poverty of the mother; and it was held that that was a defective contract of apprenticeship, and not a contract of hiring; and, consequently, that the pauper did not gain any settlement by serving under it. The judgment in that case delivered by my Brother *Holroyd* appears to me to apply to this. He there says that he was of opinion "that the relation of master and apprentice was contemplated by the parties, or at least that there was not sufficient ground to warrant the Court in concluding that the relation of master and servant was contemplated by the parties." I think that, in this case, there was not sufficient ground to warrant the sessions in concluding that a contract of hiring was contemplated by the parties. My Brother *Holroyd* proceeds; "It appears that application was made by the master, who was a shoemaker, to the mother of the pauper, and he offered, if she would agree to his proposal, to take her son, then a boy, to learn his business. That was the subject of the application, and it was for the mother to consider whether she would consent to the proposal made to her." In this case it appears, that the father of the pauper was about to put the pauper out to service, and that *Cole*, a carpenter, suggested that it was better for the pauper to learn his (*Cole's*) trade, instead of going to service. This was the proposal made by *Cole*, and it was for his father to consider whether he would consent to it. If the father had then put the son out to *Cole*, it would clearly have been in the character of an apprentice, and not in that of a hired servant. The case then states, that *Cole* hired the pauper from his mother to learn his trade. The object, therefore, of the master was, that the pauper should learn his trade, or in other words, that he should serve him as an apprentice and not as a servant. That being so, I think to use the words of my Brother *Holroyd* in *Rex v. St. Margaret's, King's Lynn*, there was not sufficient in this case to warrant the sessions in finding that the relation of master and servant subsisted between these parties. The fair inference from the facts stated, is, that there was not in this case any contract of hiring, but a defective contract of apprenticeship. No settlement, therefore, was gained in *Presteign*, and the order of sessions must be affirmed. — Order of sessions affirmed.

131. *Rex v. Tipton*, T. T. 10 G. 4. — 9 B. & C. 888. — Upon appeal against an order of two justices, whereby *James Smith*, his wife and children, were removed from the parish of *Birmingham*, in the county of *Warwick*, to the parish of *Tipton*, in the county of *Stafford*; the sessions confirmed the order, subject to the opinion of this Court on the following case: — *James Smith*, the pauper, gained a settlement

ticship, and not a contract of hiring, this Court confirmed the order of sessions.

A. being of full age, entered, together with his father, into the following agreement (not under

seal), that he would serve B. as an articulated servant for four years, to learn his art or trade of a plumber, glazier, and painter, at weekly wages; and it was agreed that A. should be considered an out apprentice. A. was to do gardening, or any other work his master should set him about, and in case A. should be ill, the master should not pay him any wages during the time he should be ill. The master agreed to teach and instruct A. in the art and mystery of a plumber, glazier, and painter. A. served for a year under this contract; the sessions having found that this was a defective contract of apprenticeship, and not a contract of hiring, this Court affirmed their decision.

by hiring and service in the parish of *Tipton*, in the year 1820. About two years afterwards, he entered into the following agreement in writing with *John Thompson*, of *King's Morton*, in the county of *Worcester*. "An agreement made the 4th day of *October* 1822, between *J. Thompson*, of *King's Morton*, in the county of *Worcester*, plumber, glazier, and painter, of the one part, and *James Smith*, aged about twenty-eight years, one of the sons of *Jacob Smith*, of the parish of *Solihull*, in the county of *Warwick*, of the other part. The said *James Smith* and *Jacob Smith* do severally promise and agree that the said *James Smith* shall and will serve the said *J. Thompson* as an articulated servant for the term of four years, to commence from the 4th of *October* 1822, to learn his art or trade of plumber, glazier, and painter, at the wages of 6s. a week for the first year, and 7s. a week for the second year, 8s. for the third year, and 9s. a week for the fourth year; and it is agreed that the said *James Smith* shall be considered as an out apprentice, and the said *James Smith* and *Jacob Smith* shall and will find and provide for the said *James Smith* sufficient meat, drink, washing, lodging, and clothing, and all other necessaries during the said term; and the said *James Smith* shall and will do and perform gardening or any other work his master shall set him about during the said term. And in case the said *James Smith* shall be ill and unable to work, or shall absent himself from his master's business, or lose any time during the said term, that the said master shall not pay him any wages during the time he shall be ill or lose any time as aforesaid. And that the said *James Smith* shall and will faithfully serve his said master in all lawful business during the said term, and shall and will behave himself honestly, orderly, and obediently during the said term, and the said *John Thompson* doth promise and agree that he will teach and instruct the said *James Smith* in the art and mystery of a plumber, glazier, and painter, during the said term, in the best manner that he can, and that he will pay the wages above set forth to the said *James Smith* during the said term, and the said parties do hereby severally bind themselves for the true and faithful performance of all the agreements above set forth at all times during the said term." This agreement was signed by the parties, and attested by two witnesses, but it was not sealed or stamped. The pauper served *Tompson* under this agreement for more than a year, and boarded and lodged during that time at *Tompson's* house in the parish of *King's Morton*.—*BAYLEY J.* delivered the judgment of the Court. In this case the pauper entered into an agreement that he would serve one *Tompson* as an articulated servant for four years, to learn his art or trade of a plumber, at certain weekly wages therein mentioned; and it was agreed that the pauper should be considered an out-apprentice. In this instrument, the character in which the pauper was to act is described both as that of an articulated servant and of an apprentice. We must therefore look to the whole of the instrument to learn whether the parties contemplated the relation of master and servant, or that of master and apprentice. Now, first, it is not usual for a father to be a party to a contract whereby his son (of full age) contracts to serve. The fact of the pauper having contracted to do gardening or any other work does not necessarily shew that the parties contemplated a mere hiring. In *Rex v. Combe (a)* the pauper was to do any other work as well as

(a) 8 B. & C. 82.

that of a carpenter, and yet the contract was considered to be an imperfect contract of apprenticeship. So the stipulation to pay wages does not necessarily imply that the parties contemplated the relation of master and servant. Here the master undertook to teach his trade to the pauper. Learning the trade, therefore was one great object of the parties to the contract. There is a provision in the instrument that if the pauper should be ill the master should not pay him any wages during the time of his illness. That is not an improper stipulation in a bargain for an apprenticeship; but the law imposes on the master the obligation of providing for a servant during illness. There are some circumstances in this case tending to show that the parties contemplated a contract of apprenticeship, and others that they contemplated a contract of hiring. But, on the whole, as it appears that the main object of the parties was that the pauper should learn the trade of plumber, and as the court of quarter sessions may probably have thought the wages too low for a mere servant, we think that, though the case admits of great doubt, this contract was an imperfect contract of apprenticeship. The order of sessions must, therefore, be confirmed.—Order of sessions confirmed.

132. *Rex v. Edingale*, E. T. 10 & 11 G. 4.—10 B. & C. 739.—Upon an appeal against an order of two justices, whereby *Henry Brown*, his wife and children, were removed from the township of *Edingale*, in the county of *Stafford*, to the township of *Clifton* and *Haunton*, the sessions quashed the order, subject to the opinion of this Court on the following case:—The pauper, *Henry Brown*, before the death of his father, which took place about thirty years ago, when the pauper was ten or eleven years of age, had used to work with his father at his trade of a tailor. After the death of his father, he was put by his mother from time to time to work with other tailors, who paid him for the work he did. At the age of fourteen he went to live with *John Tricklebank*, a tailor residing in the township of *Clifton* and *Haunton*, under an agreement, the circumstances of which were as follow:—The pauper first saw *Tricklebank* when he went over to his shop on an errand for a suit of black. *Tricklebank* said the pauper was just such a one as he wanted; he thought he would suit him. The pauper said his mother would like to make him an apprentice. *Tricklebank* said he would not take him apprentice, because if he did he should offend the farmers: he would take him on agreement for four years. A week after this, *Thornton* the pauper's father-in-law, and the pauper, went over again to *Tricklebank*, and *Thornton* agreed with him that the pauper should serve him four years. He was to go to him to learn his trade, to have meat, drink, washing, and lodging the whole time; to receive no money for the first two years, but 2s. 6d. a week for the last two years. It was said at the time when the agreement was made, that the pauper was to go to him to learn his trade. When the pauper had lived with *Tricklebank* under this agreement about a year and eight weeks, his father-in-law having neglected to supply him with clothes, *Tricklebank* agreed with the pauper to give him 1s. 6d. a week from that time for the remainder of the term, instead of 2s. 6d. a week for the last two years. In the third year the pauper, having quarrelled with his master, ran away and went to his mother at *Tamworth*; upon which he was taken by *Tricklebank* before a magistrate, who made him return to his master, with whom

Where a pauper applied to a master to take him as an apprentice, and the master said he would not, because if he did he should offend the farmers, but would take him on agreement for four years; and a week afterwards it was agreed between the master and the father-in-law of the pauper that the pauper should serve the master four years to learn his trade, to have meat, drink, washing, and lodging the whole time, and 2s. 6d. a week for the last two years: Held, that the principal object of the parties being that the pauper should learn the trade of the master, it was to be deemed a con-

tract of apprenticeship, and not one of hiring and service.

he continued to live until the expiration of the four years, and remained four days over to make up the lost time. During the whole time that he thus lived with *Tricklebank* he worked at his trade of a tailor, and did nothing else. He slept in the township of *Clifton* and *Haunton* during all the time.—Lord TENTERDEN C. J. The question is, Whether the contract between the master and the pauper is to be considered a contract of apprenticeship or of hiring and service? If that was a question of fact, as it may be, the sessions have decided it. If, on the other hand, it be a question of law for the decision of this Court, I am of opinion the contract was one of apprenticeship, and not one of hiring and service. We must form our judgment of the nature of the contract from the substance of the bargain between the parties. It appears that when the pauper first saw the master, the latter said he would not take him as an apprentice, because if he did he should offend the farmers; but at the time when the agreement was finally made between the master and the pauper's father-in-law, it was stated that the pauper was to go to him to learn his trade. That being the object of the parties, expressed at the time of making the agreement, I cannot distinguish this from the case of *Rex v. Combe*, which followed shortly after that of *Rex v. St. Margaret's King's Lynn*, in which the master offered to take a boy to learn his business; and that being the object for which he was to be taken, the Court thought that there was not sufficient to warrant the sessions in finding that the relation of master and servant subsisted between those parties.—BAYLEY J. A plain intelligible rule is laid down in *Rex v. St. Margaret's, King's Lynn*, which was acted upon in *Rex v. Combe*, that where the substantial object of the parties to a contract is to learn, and not to serve, the contract should be deemed one of apprenticeship, and not one of hiring and service. In this case, it is manifest that learning and teaching were solely in the contemplation of the parties at the time when the contract was made. The sessions, therefore, were right in coming to the conclusion, that it was an imperfect contract of apprenticeship. If it were a mere question of fact, we ought, before we reverse their decision, to see clearly that there were not sufficient premises to warrant that conclusion.—LITLEDALE and PARKE Js. concurred.—Order of sessions confirmed.

A pauper hired himself for a year, at 5*l.* wages, to his aunt, who occupied six acres of land; when she had no work for him he was to work for anybody for his own benefit: Held, this was an exceptive hiring, and that service under it did not confer a settlement.

133. *Rex v. South Killingholm*, E. T. 10 & 11 G. 4.—10 B. & C. 802.—Upon an appeal against an order of two justices, whereby *R. Robinson* and his wife and family were removed from the parish of *South Killingholme*, in the parts of *Lindsey* and county of *Lincoln*, to the parish of *Elsham* in the said parts and county; the sessions quashed the order, subject to the opinion of this Court on the following case:—The respondents proved a *prima facie* case in the appellants' parish of *Elsham*. The appellants proved that the pauper being unmarried and without child in 1823, hired himself for a year for 5*l.* wages, and 5*s.* earnest, to his aunt, who resided in the parish of *North Killingholme*, and occupied six acres of land and kept two cows there: when his aunt had no work for him, he was to work for any body else for his own benefit. The pauper entered the service, resided, and worked with his aunt during the whole year, except that in harvest time he worked for a fortnight with another person at 2*s.* per day, which he received for his own benefit, sleeping every night at his aunt's, and doing all the work she had for him to do every

morning before he went to work, and generally in the evening when he returned, unless it was too late. He received his wages at the expiration of the year. The next year he was hired to another master at 9*l.* wages.—Lord TENTERDEN C. J. The decisions certainly are not very distinguishable from each other, but I think this case comes nearer to *Rex v. Edmond* (a), *Rex v. Polesworth* (b), and *Rex v. Lydd* (c), than to the more early ones. The parties to the contract must have contemplated some portion of the year when the aunt would not have employment for the pauper; and if that be so, the contract did not include the whole year, but only such part of the year as she would have work for the pauper.—BAYLEY J. The fair meaning of the contract was, to limit the service of the party hired to that portion of the year during which the aunt might have occasion for it.—LITLEDALE J. concurred.—PARKE J. If the meaning of the words be taken to be that the aunt, when she did not choose to employ the pauper the whole year, might decline doing so, the contract of hiring was not for a year. And construing the words of it according to their natural import, I think that was the fair meaning, and that this was an exceptive hiring. In *Rex v. Chertsey* (d) the pauper was hired for a year, and was to “have her board and lodging, and such profits as she could make by keeping fowls, and what she could earn by her own labour.” The latter words were considered by *Ashurst* and *Grose* Js., to give her liberty to do such work as she could consistently with the service which she was in the first instance bound to perform for her master.—Order of sessions quashed.

134. *Rex v. Frome Selwood*, T. T. 11 G. 4. & 1 W. 4.—1 B. & Ad. 207.—Upon appeal against an order of two justices, whereby *John Bagnall*, his wife and children, were removed from the parish of *Birmingham*, in the county of *Warwick*, to the parish of *Frome Selwood*, in the county of *Somerset*, the sessions confirmed the order, subject to the opinion of this Court on the following case:—The pauper being settled at *Frome Selwood*, was hired by *John Wright*, a bedstead-maker at *Birmingham*, on which occasion the following agreement in writing was entered into between the parties:—“Articles of agreement made the 16th day of August 1820, between *John Bagnall* of *Birmingham*, in the county of *Warwick*, bedstead-maker, of the one part; and *John Wright* of *Birmingham* aforesaid, bedstead-maker, of the other part. First, the said *John Bagnall* doth undertake and agree with the said *John Wright* by these presents, that he, *J. Bagnall*, in consideration of the wages hereinafter agreed to be paid to him by the said *J. Wright*, shall and will, from the date hereof, for and during, and unto the full end and term of three years from thence next ensuing, and fully to be complete and ended, work for and serve the said *J. Wright* in the business and employment of a bedstead-maker, and in such particular branches thereof, as the said *J. Wright* shall from time to time think proper to employ him. And also that he, the said *J. Bagnall*, shall and will, from time to time, during the continuance of the aforesaid term, to the best of his power and capacity, make, manufacture, and complete such goods as shall from time

A pauper was hired for three years, to work in summer from six in the morning to seven in the evening, and in the winter till seven in the morning to eight in the evening, and he was not to work for or serve any other person: Held, this was an exceptive hiring, and no settlement was gained by a service under it.

(a) 3 B. & A. 107.
(c) 2 B. & C. 754.

(b) 2 B. & C. 715.
(d) 2 T. R. 37.

“ to time be given or delivered to him, or which he shall be requested to make. And also that he, the said *J. Bagnall*, shall work from six o'clock in the morning to seven in the evening in summer, and from seven in the winter to eight o'clock in every working day during the said term, and shall not, nor will, during the said term, work for or serve any other person whomsoever; and the said *J. Wright*, in consideration of such work and service, doth hereby undertake and agree with the said *J. Bagnall* to find him full employment during the said term, and to pay him on *Saturday* night in every week for the first year 7*s.*, the second year 8*s.*, and the third 9*s.*” The pauper stayed in *Wright's* service in *Birmingham* for a year under the above agreement. The question for the opinion of this Court was, whether or not the pauper gained a settlement in *Birmingham* by the hiring and service above mentioned.—*BAYLEY J.* The rule is, that if a party contract generally to serve in a particular trade, though he may be bound to work only during the usual hours of work in that trade, yet by so working he will gain a settlement. But if it be made part of the bargain that the person hired shall serve for specific hours only, then the relation of master and servant does not subsist out of those hours, according to the maxim, *expressio unius est exclusio alterius*, and that is an exceptive hiring. In *Rex v. Buckland Denham* (a) there was an express exception in the contract; the pauper was hired as a shearman, to serve for five years, to work shearman's hours only. The same observation applies to *Rex v. Kingswinford* (b). The hiring there was for seven years, to work for thirteen hours in the day (*Sundays* excepted). *Rex v. Birmingham* (c) goes further than either of those cases. The pauper there was hired for a year, to work from seven in the morning to seven in the evening, with liberty to make as much overwork as he pleased; and as it was optional in him to do overwork or not, and as he might refuse to work more than thirteen hours, the Court held that there was an exception in the contract limiting the control of the master to the specific period of time therein mentioned. In the case of *Rex v. North Nibley* (d), the terms of the hiring were the same as in the present case. They do not admit of the distinction contended for with regard to the difference between serving and working. There the pauper was hired as a colt shearman, to work twelve hours each day, and that was held to be an exceptive hiring, upon the ground that the servant, to gain a settlement, must be under the control and coercion of the master the whole time of service. Now, in this case, although the servant could not have worked for any other master out of the stipulated hours, he might have worked for himself, or, at all events, might have refused to execute during those hours any commands of his master in his business. This, therefore, was an exceptive hiring, and no settlement was gained by the service under it.—*LITLEDALE J.* I thought in *Rex v. St. John, Devizes*, and I think now, that if the case were *res integra*, an engagement to work thirteen hours in the day ought to give a settlement, being all the work that could be reasonably exacted. But it appears to me that the authorities are exclusive in favour of the finding of the sessions.—*PARKE J.* I think this case is governed

(a) *Burr. S. C.* 694.(c) 9 *B & C*. 925.(b) 4 *T. R.* 219.(d) 5 *T. R.* 21.

by the principle to be collected from *Rex v. Birmingham* (a), and it is to be observed that the agreement is not simply for service, but for service in a particular trade, so that the exception in the hours of working was an exception of the very thing which was the subject matter of the contract of hiring.—Order of sessions confirmed.

135. *Rex v. Nether Knutsford*, H. T. 1 W. 4.—1 B. & Ad. 726.—On appeal against an order of two justices, whereby *George Hamond* and his family were removed from the township of *Nether Knutsford* to the township of *Pownall Fee*, both in the county of *Chester*, the sessions quashed the order, subject to the opinion of this Court on the following case:—In 1814, the pauper, who was then about fifteen years of age, and his father, and *Thomas Webb*, all residing in *Nether Knutsford*, agreed that a pauper, who had previously worked for *Webb* upwards of three weeks, should continue to serve him upon the terms contained in the following memorandum, except as afterwards altered:—"This memorandum, made the 1st day of *December*, 1814, between *Thomas Webb*, weaver, of *Nether Knutsford*, on the one part, and *George Hamond*, son of *Peter Hamond*, weaver, of *Nether Knutsford*, on the other part, viz. the "aforenamed *G. Hamond*, of his own free will, together with the "united consent and authority of his father *P. Hamond* aforenamed, "doth covenant, promise, and agree to hire himself in the service of "*Thomas Webb*, to labour at the art, mystery, trade, or business of "a cotton weaver for the term of three years from the date above-mentioned unto the 1st day of *December*, 1817; his secrets he "will keep, all his lawful commands he will strictly observe and "obey to the utmost of his power, he will serve him justly, truly, "honestly, and faithfully for the term of three years above named. "And the aforesaid *Thomas Webb*, on his part, doth covenant, promise, and agree with the above named *G. Hamond* and *P. Hamond* "his father, that as a reward for all the honest and faithful labours "of his son *G. Hamond* in the above business for the term of three "years, he *Thomas Webb* will give him the one half of all his just "earnings in the above business, according to present prices, monthly, "be they more or be they less; and in addition to wages named, he "will give him every other fent (b), on condition of having the free "use of his father's fire for his son's accommodation the time he "may want the same. And the aforesaid *T. Webb*, weaver, doth "covenant, promise, and agree with the aforenamed *G. Hamond* "and his father *P. Hamond*, that, as a complete compensation for "all the industrious services of the aforenamed *G. Hamond*, he "will instruct him (or cause him to be instructed) in all the art, "mystery, calling, business, or trade of a cotton weaver, to the utmost of his power and ability so to do, in the above term of three "years above-mentioned. As witness our hands. *Thomas Webb*. "*George Hamond*. *Peter Hamond*." The memorandum was read over in the presence of *T. Webb*, the pauper, and his father, by

The pauper, by an unstamped memorandum, to which his father was a party, hired himself in the service of *T. W.* to labour at the art and mystery of a cotton weaver for three years; and he promised *T. W.* that his secrets he would keep, all his lawful commands strictly obey, and serve him faithfully for the said term. By the same memorandum the master undertook, as a reward for pauper's labours, to give him half his just earnings; and further covenanted, as a complete compensation for his industrious services, to instruct him in all the art and mystery of a cotton weaver, to the utmost of his power, in the above term. When the agreement was read over, at the word hire *T. W.* gave pauper a shilling. There was no premium. At the making of the

agreement nothing was said about work on *Sundays*; the pauper did none on those days, and never did any but weaving. At the end of two years *T. W.* removed, and pauper served the rest of his time out with his father. He lived with his father all the three years:

Held, that the agreement with *T. W.* was a defective contract of apprenticeship.

(a) 9 B. & C. 925.

(b) A part of inferior quality, usually cut off the end of a cotton piece.

Peter Bradburn, who had prepared it. Nothing was said about *Sundays*. At the word "hire," *Webb* gave the pauper a shilling, but nothing was said by either of them; and at the words "cause to be instructed," the pauper's father objected to them, whereupon *Bradburn* struck his pen through them, as appeared on the face of the memorandum. The pauper served *T. Webb* in *Nether Knutsford* under this agreement for three years, and never did any other work for his master but weaving. At the expiration of two years, or thereabouts, *Webb* removed to *Manchester*, and the pauper remained in *Nether Knutsford*, and served the remainder of his time out with his father. The pauper lived and lodged with his father in *Nether Knutsford* during the whole time, and on *Sundays* he stayed at home, and did no work for his master. *Bradburn*, who prepared the agreement, proved that no premium was given, and he was then stopped, by the Court quashing the order.—*LORD TENTERDEN C. J.* I am of opinion that this was a defective contract of apprenticeship, and not a hiring. We must look at the substance of the agreement, rather than the precise words. The pauper is hired to labour at the art, mystery, trade, or business of a cotton weaver for three years (and it does not appear from the case that any other duty was expected from, or was ever done by him); he promises the master that "his secrets he will keep, all his lawful commands he will strictly observe and obey to the utmost of his power," in the terms usual in an indenture of apprenticeship. The master, on his part, undertakes to give him, as a reward for his honest and faithful labours, one half of his earnings; and he further covenants, as a complete compensation for all the industrious services of the said *G. Hamond*, to instruct him in all the art, mystery, or business of a cotton weaver, to the utmost of his power and ability. It appears to me, from the whole of the stipulations taken together, that the contract was for apprenticeship, and not merely for service. As to the promise "to cause to be instructed," which the father objected to, I should consider that to have been struck out, not with a view to giving up any claim to instruction, but to prevent the boy from being handed over to another teacher.—*LITLEDAL J.* concurred.—*TAUNTON J.* I am of the same opinion. And the parties themselves seem to have put the construction upon the agreement which we now do; for, when *Webb* removed to *Manchester*, the pauper is stated to have served the remainder of his time out with his father.—Order of sessions quashed.

A. hired himself to serve for a year, but told his master at the time of the hiring, that he had been called upon to serve in the local militia the year before, and expected to be called out again in the May following. And it was agreed that the master

136. *Rex v. Elmley Castle*, *T. T. 2 W. 4.*—3 *B. and Ad. 826.*—On appeal against an order of two justices whereby *G. Hall*, his wife and child, were removed from *Kemerton* to *Elmley Castle*, the sessions confirmed the order, subject to the following case:—*Hall* the pauper hired himself on the 10th of *October* 1811, to *Bluck* of *Elmley Castle*, until *Old Michaelmas-day* in the following year, at 14*l.* 14*s.* wages. Having been called upon to serve in the *Warwickshire* local militia in the course of the preceding year, he informed *Bluck* of that fact at the time of hiring, and at the same time told him, that he expected to be called out to serve again in the *May* following; and it formed part of the agreement between them, that the pauper should allow his master to deduct out of his wages 1*s.* a day for as many days as he should be absent on service with the militia. The pauper entered into the master's service, and resided and served the

whole year in the appellant parish, except fourteen days, during which he was absent on service with the militia. At the end of the year he received his wages, with the exception of 14s. which *Bluck* deducted for the fourteen days' absence.—Lord TENTERDEN C. J. I think the pauper clearly gained a settlement in the parish of *Elmley Castle*, and my opinion is founded on the terms of the contract of hiring, and the language of the sixty-fifth section of the 52 G. 3. c. 38. It appears that the pauper, on the 10th of *October* 1811, hired himself to *Old Michaelmas-day* following; and he informed his master, at the time of hiring, that he had been called upon to serve in the militia in the course of the preceding year, and expected to be again called out to serve in the *May* following; and it was part of the agreement that his master should deduct out of his wages 1s. a day for as many days as the pauper should be absent on service in the militia. There is nothing of absolute exception in the terms of the contract. The exception or condition, if any such there was, arose from the operation of law on the individual. He was a militia-man, and, as such, was bound by law to serve, if called upon so to do. Then the 48 G. 3. c. 111 s. 15. and the 52 G. 3. c. 38. s. 65. enact, "that no ballot, enrolment, and service under this act, shall extend to make void, or in any manner to effect, any indenture of apprenticeship or contract of service between any master or servant, notwithstanding any covenant or agreement in any such indenture or contract, and no service under this act, of any apprentice or servant, shall be deemed to be an absence from service, or a breach of any covenant or agreement as to any service or absence from service in any indenture of apprenticeship or contract of service." The service of the pauper, therefore, in the militia, is not, in point of law, an absence from his service with his master. It is true, that in this case, the parties by their contract have provided, that while the pauper was serving in the militia, though, in point of law, he must be considered as serving his master, he was not to receive any wages. But that makes no difference; the general words of the act are sufficient to enable us to say, that under such a contract as the present, and notice having been given at the time of hiring that the servant was liable to be called on to serve, he was, in point of law, serving his master while he was in the militia, so as to acquire a settlement by hiring and a service for a year.—LITTLEDALE J. This case comes very near those of *Rex v. Westerleigh*, (a) and *Rex v. Winchcombe* (b); but whether those decisions were right or not, the effect of the clauses in the militia act is to place this party in the same situation as if he had served the master during the time he was in the militia.—PARKE J. This case is undoubtedly very like *Rex v. Westerleigh* (a), and *Rex v. Winchcombe* (b). In *Rex v. Taunton St. James*, (c), the objection was, that the pauper was not when he hired himself, capable of making an absolute contract to serve for a year, and, therefore, having made such contract without reference to his liability as a militia-man, he was not lawfully hired for a year, and gained no settlement. But here, the pauper did communicate the fact of his being a militia-man to the master. There is nothing in that case to shew that under such circumstances a service in the militia may not be considered as service to the master.—TAUNTON J. I am of the same opinion, and I think the sessions

should deduct out of his wages 1s. a day for as many days as he should be absent on service in the militia. A. having served under that contract a year all but 14 days, during which he was absent on service in the militia, and 1s. a day was deducted from his wages; it was held that he thereby, and by virtue of the Militia Act 52 G. 3. c. 58. s. 65. gained a settlement.

(a) *Burr. S. C.* 753.(b) *Dougl.* 391.

(c) 9 B. & C. 831.

would have done better not to send up this case. *Rex v. Westerleigh*, and *Rex v. Winchcombe*, were decided by Judges who were eminent sessions lawyers, and I think the principles upon which those decisions took place are correctly stated by Mr. Nolan, in his *Treatise on the Poor Laws*. *Rex v. Holsworthy* (a) was decided on the ground that the pauper did not, at the time of hiring, inform his master that he was a militia-man. Here the pauper did so. There was a good hiring for a year. The statute enacts, that no service in the militia shall be deemed to be an absence from service with the master; but, independently of that statute, my opinion, founded on the decisions of *Rex v. Westerleigh* and *Rex v. Winchcombe*, would have been the same. Order of sessions confirmed.

Of customary Hiring.—2 Bott, pl. 352.

A hiring on the 13th October 1807, to serve till the 11th October following, and service until that day, was held not to confer a settlement, although the year 1808 was leap-year.

137. *Rex v. Worminghall*, T. T. 57 G. 3. — 6 M. & S. 350. — On appeal, the quarter sessions quashed an order for the removal of *James Price*, and *Ann* his wife and two children, from the parish of *Worminghall*, in the county of *Bucks*, to the parish of *Iffley*, in the county of *Oxford*; subject to the opinion of this Court on the following case:—The pauper was hired, in 1807, at *Thame* second fair, which is always held on the *Tuesday* next after old *Michaelmas-day*, and in this year happened on the 13th *October*, to serve Mr. *Wright* of *Worminghall* till the 11th *October* following, at the wages of eight guineas and 5s. 3d. He served Mr. *Wright* in *Worminghall* till the said 11th *October* 1808, on which day he received his full wages, and quitted the service. The year 1808, was leap-year. The question for the opinion of the Court is, Whether this was a sufficient hiring for a year, so as, with the said service, to confer a settlement in *Worminghall*. — Lord ELLENBOROUGH C. J. In those years, which consist of 366 days, a hiring and service for a year must be for that same number of days; in like manner as when the year has 365 days, it must have continuance during that number. — BAYLEY J. One day was wanting to complete the year; for in leap-year, the statute (b) enacts that the year shall consist of 366 days. — HOLROYD J. The statute for regulating the bissextile year ordains, that in leap-year the intercalary day, with the day preceding it, shall be accounted as one day (c). — Order of sessions quashed.

A hiring from the 13th of May 1819 to the 13th of May 1820 (that being leap-year), and a service under it till the 12th of May 1820, viz. 365 days: Held, not sufficient to give a settlement. The service must be for a whole year, although it happen to consist of 366 days.

138. *Rex v. Roxby*, M. T. 10 G. 4. — 10 B. & C. 51. — Upon an appeal against an order of two justices, whereby *R. Farmery*, his wife, and children, were removed from the parish of *Roxby*, in the parts of *Lindsey*, in the county of *Lincoln*, to the parish of *Winterton*, in the same parts and county, the sessions quashed the order, subject to the opinion of this Court on the following case:—The pauper, being unmarried and without children, was hired before *Old May-day* 1819 (13th of *May*), to serve *James Barratt*, in the parish of *Winterton*, from the said *Old May-day* to *Old May-day* 1820, as a servant in husbandry, at 16l. wages. The pauper served *Barratt*, in *Winterton*, until the 11th *May* 1820, when, wishing to visit his friends, fifteen miles distant, and to attend some statutes on the 12th of *May* on the way there, and avoid returning back to his master, he requested his master's permission to go for altogether; and they settled

(a) 6 B. & C. 282.

(b) 24 G. 2. c. 23.

(c) 21 H. 3.

the pauper's wages, and part was deducted for the time he had to serve. The pauper slept at his master's house, with his permission, on the evening of the 11th of May, and finally left his master's on the 12th, (1820 was leap-year). The Court of quarter sessions considered this a dissolution of the contract.—Lord TENTERDEN C. J. The question whether there was in this case a dissolution of the contract, or dispensation with the service, was for the sessions to decide, and they have decided it. I should not be disposed to interfere with their judgment, even if I thought it was wrong, which I do not: as to the other point, I think that the year for which the pauper contracted to serve, was one of 366 days. He did not serve that number of days, therefore there was not a year's service.—BAYLEY J. The statute 24 G. 2. c. 23. s. 2. enacts, that leap-year shall consist of 366 days.—Order of sessions confirmed. (a)

Of conditional Hiring.—2 Bott, pl. 362.

139. *Rex v. Saint John, Devizes, T. T. 10 G. 4.* — 9 B. & C. 896.—Upon an appeal against an order for the removal of *Prudence Abrahams* from *Chippenham* to *Devizes*; the sessions confirmed the order, subject to the opinion of this Court on the following case:—The pauper being at the time settled in *Saint John Devizes*, on February 6th, 1826, was hired by the foreman of one *Spiers* under the following agreement, which was signed by the parties named in it:—*“Prudence Abrahams of Brumham, in the county of Wilts, silk winder or weaver, with the consent and approbation of her father Robert Abrahams, hereby hires herself to Mr. Joseph Spiers of Chippenham, to work in his factory as silk winder or weaver for four years from this day. And Mr. J. Spiers agrees to pay for the services of the said Prudence Abrahams 2s. a week for the first year, 3s. per week for the second year, 4s. per week for the third year, 5s. per week for the fourth year, and 5s. per week for the fifth year, subject to a proportionate reduction being made for loss of time occasioned by sickness, or her being otherwise absent from work. And it is hereby agreed that the said Prudence Abrahams shall in all things observe and obey all the rules and regulations of the said Mr. J. Spiers, as well with regard to the hours of attendance and of work, as the mode and other particulars of working; and shall in all things whatsoever conduct herself faithfully, honestly, and diligently, in her said engagement, and as a good servant ought to do. It is also agreed that in case the said Prudence Abrahams shall unnecessarily waste or otherwise lose, destroy, or make away with the silk entrusted to her, that she shall pay such reasonable compensation to Spiers as his superintendent shall appoint. If at the expiration of the above period the said Prudence Abrahams shall have behaved well, shall have done her work well, and shall in every respect have duly performed this engagement, but not otherwise, Mr. J. Spiers promises to give the said Prudence Abrahams the sum of 3l. as a gratuity and reward for her good conduct, over and above the weekly wages above specified, subject nevertheless to any deduction which may have accrued in the respect of absence by reason of sickness or otherwise above mentioned.”* When the pauper executed the agreement, the foreman

A pauper hired herself to A. B., to work in his factory for four years, at weekly wages. There was a stipulation in the agreement, that the pauper should observe and obey all the rules and regulations of the factory, as well with regard to the hours of attendance and of work as the mode and other particulars of working. The pauper was told she must work twelve hours a day; but the rules of the factory were occasionally varied by the master: Held, that this was not an exception in the contract of hiring, and that a settlement was gained by service under it.

(a) See *Rex v. Warminghall*, 6 M. & S. 350.

told her that she must observe the working hours, and if certain work was not done, must work twelve hours a day. The pauper entered on her service the day she executed the agreement. Rules for the factory had not at that time been reduced to writing. The foreman said they existed only in the breast of the master, but were known to and acted on by the work-people. They were during the service of the pauper occasionally altered in some respects by the master alone; but the foreman stated that the rule as to the hours of work was never changed. Time, however, was at first allowed for tea, which allowance was afterwards revoked by the master's sole authority. Under this hiring, the pauper served a year in *Chippenham*, and becoming afterwards chargeable, was removed to *St. John's Devizes*; which removal was the subject of the appeal.—The question was, whether this was an exceptive hiring, and whether the parol evidence had been properly received.—BAYLEY, J. Where there is in a contract of hiring, an express exception of any particular time, so that during that time the master cannot exercise any control over the servant, that is not a hiring for a year, and a settlement cannot be gained by service under it. We must look to the terms of the contract to learn what the bargain was in this case. By the agreement, the servant stipulates to obey all the rules of the factory with regard to the hours of attendance. In every contract of hiring, the law will imply that the party hired shall work at all reasonable hours when required. Generally speaking, the ordinary working hours in a manufactory are twelve hours per day; but it does not therefore follow that the master may not on extraordinary occasions require his servants to work at other hours; and whether he does so or not, the relation of master and servant continues during the whole day. It does not appear by this case, what the specific rules and regulations were as to hours of work. But assuming that one of them was, that the servant was to work twelve hours per day; yet inasmuch as the regulations might be, and were, from time to time altered by the master, the stipulation that the servant should obey the rules and regulations of the factory with regard to hours of work, did not give the servant any right to say that the master should not require her services at all reasonable hours. Such a stipulation does not necessarily imply that she is not to work beyond certain hours. The true meaning of this agreement is, that the relation of master and servant was to continue the whole day. There is no express exception in the contract, and no remission of service but such as the law will imply in every contract of hiring. The order of sessions must therefore be quashed.—LITLEDALE J. To constitute a yearly hiring, the relation of master and servant must subsist during the whole year, and during the whole of every day in the year. It has been held in several cases, that a hiring in terms for a year, the servant to work for so many hours a day, is an exceptive hiring. Those cases have gone to a great extent. It seems to me that unless by the terms of such a contract there is an express exception, shewing that the relation of master and servant is not to subsist during the whole year, or during the whole of every day in the year for which the contract has been made; it is a yearly hiring. By the contract in this case, the servant was to conform herself to the rules and regulations of the factory. That is a stipulation which the law would imply in every contract of hiring; and we cannot from that infer that there was an exception of any period of time, during

which the relation of master and servant was not to exist.—**PARKE J.** I have no doubt that any thing which passed by parol between the foreman and the pauper, was not admissible evidence to explain the agreement. It is said that there is an exception in the agreement, by reason of that stipulation, whereby the pauper agreed to obey the rules and regulations of the factory. But that imports no more than a contract to obey the orders of her master, which is a term implied in every contract of hiring.—Order of sessions quashed.

140. *Rex v. Birmingham*, T. T. 10 G. 4.—9 B. & C. 925.—Upon an appeal against an order of two justices, whereby *W. Steam*, his wife and children, were removed from the parish of *Birmingham* in the county of *Warwick*, to the township of *Atherstone* in the said county; the sessions confirmed the order, subject to the opinion of this Court on the following case:—*W. Steam*, the pauper, being settled at *Atherstone*, and unmarried, went to live with *James Owen*, a button-caster, of *Birmingham*. After he had been with him some time, *Owen* hired him for a year at the wages of 4s. 6d. per week; nothing was said about *Sundays*. It was a part of the terms of hiring that the pauper was to work from six in the morning to seven in the evening, and might make as much overwork as he chose. He received earnest when he was hired. He served his master under this contract for a year, during which he lived in his master's house and boarded himself, he lived there on *Sundays* as well as week days, and on *Sunday* morning he used to ask if any thing was to be done, and if there was, he did it. He made a good deal of money by overwork, but never did any for any one but the master, and was never paid for it but by him; he was allowed 2d. an hour for overwork. At the expiration of the first year, he was hired by *Owen* for a second year on the same terms, except that he was to have 5s. 6d. per week wages, and 4d. an hour overwork. He served the whole of the second year. He was then hired for and served a third year upon the same terms, except that he was to have 6s. a week, and 6d. an hour for overwork.—**BAYLEY J.** This case is very different from *Rex v. Byker*. There the pauper was hired by indenture, and the master was to pay 1s. 10d. for every good day's work not exceeding fourteen hours (and 2d. per day when that time was exceeded), and the Court thought that the time was only mentioned as the measure of the wages, and that the contract did not impose any limit upon what reasonably was required by the master, and that the relation of master and servant continued during the whole twenty-four hours. But in this case there was a stipulation that the pauper was to work from six in the morning till seven in the evening, and might make as much overwork as he chose. It was optional in him to do overwork or not. He had a right to say to his master, I have worked thirteen hours, and will not work more. This is clearly an exception in the contract, limiting the control of the master to the specific period of time therein mentioned.—**LITTLEDALE** and **PARKE Js.** concurred.—Order of sessions confirmed.

A pauper was hired for a year, at the wages of 4s. 6d. per week, to work from six in the morning to seven in the evening, with liberty to make as much overwork as he pleased: Held, that this was an exceptive hiring, and that no settlement was gained by serving under it.

141. *Rex v. Farleigh Wallop*, T. T. 11 G. 4. & 1 W. 4.—1 B. & Ad. 336.—Upon appeal against an order of two justices, whereby *John Bullpett* and his wife were removed from the parish of *Basingstoke* in the county of *Southampton*, to the parish of *Farleigh Wallop* in the same county, the sessions confirmed the order, subject to the opinion of this Court on the following case:—In the first week

A pauper was hired to serve as carter, from *Michaelmas* to *Michaelmas*, if the master had no sale, and if

he should have a sale the pauper was to go: in a few months the master had a sale, and the pauper left: Held, that the hiring was a good contract for a year, and the pauper having served the master a year, and part of that time under such yearly hiring, gained a settlement.

of *January* 1824, the pauper was hired by Mr. *Faithful* in the parish of *Farleigh Wallop*, to serve as under-carter from that time till the following *Michaelmas* at 3s. 6d. a week, and 1l. at *Michaelmas* for wages. The pauper served till *Michaelmas* 1824, when *Faithful* again hired him till the following *Michaelmas*, if he had no sale, at 3s. 6d. a week, and 3l. at *Michaelmas* for wages; if he should have a sale the pauper was to go. The pauper served till *February* 1825, when *Faithful* had a sale, and the pauper went away from his service, having received 1l. 10s. from *Faithful* for wages. It was contended, on the part of the appellants, that the latter hiring was not a hiring for a year; for it was liable to be defeated by a contingency within the year, which contingency happened within that period. The sessions, however, held, that it was a sufficient yearly hiring to allow of the service under it being connected with the previous service, and that, therefore, a settlement was gained in the appellant parish.—

BAYLEY J. I am of opinion that there was in this case a sufficient hiring and service to confer a settlement. The statute 3 *W. & M. c. 11. s. 7.* enacts, "that if any unmarried person, not having child or children, shall be lawfully hired into any parish or town for one year, such service shall be adjudged and deemed a good settlement;" the subsequent statute 8 & 9 *W. 3. c. 30. s. 4.*, requires that the person so hired shall continue and abide in the same service for the space of one whole year. The question in this case is, whether the pauper was lawfully hired for a year within the meaning of the former statute? In order to form a judgment whether there was a hiring for a year, we must look to what took place at the time of the hiring. The sessions find, that at *Michaelmas* 1824, *Faithful* hired the pauper till the following *Michaelmas*, if he should have no sale, at 3s. 6d. per week, and 3l. at *Michaelmas* for wages; if he should have a sale the pauper was to go. There was liberty, therefore, reserved to the master to put an end to the contract of hiring within the year. But until he exercised that liberty the hiring was for a year. The pauper was under an obligation to serve for a year, provided the master required his service for that period and did not do any thing to determine the contract. A hiring may be for a year absolutely or conditionally; in either case it is a hiring for a year. Here the pauper served more than eight months before *Michaelmas* 1824: then that which I consider a hiring for one year, within the statute 3 *W. & M. c. 11. s. 7.*, took place, and there was a service of four months under the yearly hiring. It is quite clear, that service for the whole year, under the yearly hiring, is not necessary to confer a settlement. Here the pauper served more than a year under two hirings, and one of them was for a year. If he had left the service of his master after he had served under the two hirings for a year, but before any sale had been determined on, he would have been settled in the parish where he resided the last forty days before he quitted the service. In that case it would have been wholly immaterial, whether there had been any sale or not. A settlement once gained cannot be defeated by a subsequent event. There having been a service for a year, and the service in part having been under a yearly hiring, I am of opinion that a settlement was gained.—PARKER J. I am of the same opinion. The case depends on the statutes 3 *W. & M. c. 11. s. 7.* and the 8 & 9 *W. & M. c. 30. s. 4.* The first of these statutes requires a

hiring for a year, and the second a service for a year, but the whole service need not be under the yearly hiring. The sessions have found that there was a hiring from *Michaelmas* 1824 to *Michaelmas* 1825, determinable in a given event, viz. in case the master should have a sale. That was a hiring for a year defeasible within the year by matter subsequent, and such a contract is a good hiring for a year within the meaning of the statute. There was altogether more than a year's service, and part of that service was under the yearly hiring. No case has been cited to shew that a settlement once obtained can be defeated ab initio by matter subsequent; and there is no reason for our so holding, looking either at the words of the act of parliament or decided cases; for the pauper has been lawfully hired into the parish within the words of the 3 *W. & M. c. 11. s. 7.*, and having been so hired, has continued and abided in the same service so as to satisfy the words of the statute 8 & 9 *W. & M. c. 30. s. 4.* I cannot distinguish this from a case where the contract being originally for a year, has been dissolved within the year by mutual consent. In that case a settlement would be gained, provided there has been in the whole a year's service.—Order of sessions confirmed.

Of several Hirings.—2 Bott, pl. 387.

142. *Rex v. Harbury*, T. T. 11 G. 4. & 1 W. 4.—1 B. & Ad. 360.—Upon an appeal against an order of two justices, whereby *Richard Gardner* was removed from the parish of *Harbury*, in the county of *Warwick*, to *Snitterfield*, in the same county, the sessions quashed the order, subject to the opinion of this Court on the following case:—The pauper was hired on the 20th of *September* 1823, to serve Mr. *Richard Smith* of *Snitterfield*, the appellant parish, for fifty-one weeks. The pauper went into Mr. *Smith's* service on the 18th of *October* 1823, and served Mr. *Smith* for fifty-one weeks. On the 8th of *September* 1824, Mr. *Smith* again hired the pauper for a year, to commence from the *Old Michaelmas* ensuing. The pauper remained in Mr. *Smith's* house, and worked for him regularly, from the 18th of *October* 1823 until about three weeks before *Old Michaelmas* 1825. He served under the said yearly hiring till about three weeks before the *Old Michaelmas*, when the contract was dissolved. The case merely stated these facts; no point was submitted for the opinion of the Court.—BAYLEY J. There was no express hiring for the 10th of *October*, but there was a continuation of the service, not, as it appears, objected to by his master. *Rex v. Dawlish* applies.—LITLEDALE J. The words of the case are sufficiently strong. We cannot understand from them that the pauper worked as a servant on all the other days, but not on the 10th.—PARKE J. The sessions have, in substance, found a continued service from *October* 18, 1823, until the dissolution in 1825. I think their conclusion upon the facts as found by them is wrong.—Order of sessions quashed.

October 1823 until about three weeks before *Old Michaelmas* 1825;" but they quashed an order grounded on the settlement supposed to have been acquired under these circumstances:

The Court held, that the case shewed a continuing service on the 10th of *October* 1824, which might be coupled with the two services under express hirings, so as to confer a settlement, and they quashed the order of sessions.

Pauper was hired by R. S. (and served him accordingly) for fifty-one weeks, beginning *October* 18, 1823. During that term he made a new contract with S. for a year, to commence at the ensuing *Old Michaelmas*, which was *October* 11, 1824. That year being leap year, the term of fifty-one weeks expired *October* 9. The sessions found that "the pauper remained in S.'s house, and worked for him regularly, from the 18th of

Of Service in different Places. 2 Bott, pl. 413.

A hired servant is settled in that parish in which he last completes a forty days' residence, although he performs no service there for his master.

143. *Rex v. Inhabitants of Dremerchion*, E. T. 2 W. 4.—3 B. & Ad. 420.—On appeal against an order of two justices, whereby *John Williams*, his wife and children, were removed from the parish of *Northop*, in the county of *Flint*, to *Dremerchion*, in the same county, the sessions confirmed the order of removal, subject to the opinion of this Court on the following case:—The pauper, *John Williams*, hired with one *W. Evans*, for a year, from the 1st of *May* 1819, to the 1st of *May* 1820, and served with him for a year, residing in *Dremerchion*, from the 1st of *May* 1819, until *November* in the same year, when he married. From that time he resided on the week days, from *Monday* to *Saturday* evening, at his master's house in *Dremerchion*, during which time he was working for his master; but *Saturday* night, the whole of *Sunday*, and until *Monday* morning, the pauper passed with his wife in *St. Asaph* parish. The pauper's year expired on *Sunday* the 30th of *April* 1820. He had slept the night before in *St. Asaph*, and he slept there that night (*Sunday night*) also, and on *Monday* morning he returned to his master's residence in *Dremerchion*, and commenced working as a day-labourer. The contract of hiring was agreed by the pauper and his master not to be dissolved by the marriage in *November* 1819. The pauper slept more than forty nights during the year in *St. Asaph*, but no part of the time passed in *St. Asaph* was in furtherance of the service, being only allowed by the pauper's master as an indulgence, nor was there any service in fact performed by the pauper for his master in *St. Asaph*. The question reserved was, whether the pauper was properly removed to *Dremerchion*.—LORD TENTERDEN, C. J. There is a distinction recognised in several cases between apprentices and hired servants. The last parish in which the servant completes a forty days' residence, is that in which he is settled. But as to apprentices, the residence must be in furtherance of the contract of apprenticeship. The 7th and 8th sections of the 3 W. & M. c. 11. are differently worded: the 7th provides that if a party be hired into any parish, such service shall be a good settlement; the 8th requires a binding and inhabitation in the parish. Why there should have been such a distinction, I do not know, but it has been made, *Rex v. Hedsor* (a) is a stronger case than this: there the sleeping out of the master's parish was without his consent.—LITLEDALE J. concurred.—PARKE J. It is clearly established that a servant is settled in the parish where he sleeps for the last 40 days of his service. Here it is agreed that there was no dissolution of the contract.—PATTESON J. concurred.—Order of sessions quashed.

To gain a settlement by hiring and service, the whole forty days' residence need not be within the compass of a year from the time of the yearly

144. *Rex v. Child Okeford*, T. T. 2 W. 4.—3 B. & Ad. 809.—Upon appeal against an order of two justices, whereby *E. Miller* was removed from the parish of *Child Okeford* to the parish of *Marnhull*, both in the county of *Dorset*; the sessions quashed the order, subject to the opinion of this Court on the following case:—On the 17th of *April* 1825, the pauper was hired to serve Mr. *J. Rossiter*, in *Child Okeford*, as a servant in husbandry at five guineas a year. He served him under that agreement till the 11th of *April* 1826, when the

(a) Cald. 51. 2 Bott, pl. 405.

pauper made a fresh agreement with his master at 5s. a week as an out-door servant, and served him under this agreement for upwards of two months. The service was never discontinued, nor was the nature of it changed, except as to the pauper becoming an out-door servant, from the 11th of *April* 1826. The pauper resided from the 17th of *April* 1825 till the 3d of *May* following in the parish of *Child Okeford*. On the 3d of *May* 1825, he accompanied his master to and resided in that of *Marnhull* till the 6th of *April* 1826, when he returned with his master to *Child Okeford*, and resided there during the remainder of his service, under the first agreement, from the 6th to the 11th of *April*, and under the second agreement, upwards of two months.—**LORD TENTERDEN C. J.** The authorities establish that, in order to gain a settlement by hiring and service, some part of the forty days' residence must be while the party is serving under a yearly contract. It is now sought to add another term to that, namely, that the whole forty days' residence shall be within a year from the time of the yearly hiring. *Rex v. Denham (a)* does not go so far. Nothing was said in that case as to the time when the computation of the year was to commence. **Lord Ellenborough** there dwells upon the inconvenience which would result from picking out a few days' service in several years, and thus extending the enquiry in a case of settlement, through an unreasonable period of time; but all that is decided there is, that to give a settlement by hiring and service, there should be forty days' residence within the compass of one year. It is not said, that that year is to be computed from the time of making the yearly contract. There is no ground for holding that it must be so reckoned.—**LITLEDALE J.** It is sufficient if the forty days' residence be within the compass of a year; it need not be within one year from the yearly hiring.—**PARKER J.** having been present only during a part of the argument, declined giving any opinion.—**TAUNTON J.** concurred.—Order of sessions confirmed.

hiring. A servant was hired for a year on the 17th of *April* 1825, and served in parish *A.* till the 11th of *April* 1826, when he made a fresh agreement with his master as a weekly servant, and continued to serve under that agreement for upwards of two months. He resided in parish *A.* from the 17th of *April* to the 3d of *May* 1825, when he accompanied his master to and resided in another parish till the 6th of *April* 1826. He then returned with his master to parish *A.*, and resided there during the remainder of his service, viz. under the first agreement from the 6th to the

11th of *April*, and, under the second for two months: Held, that he gained a settlement in *A.*

Of Evidence of Hiring and Service.—2 Bott, pl. 488.

145. *Rex v. Northwingfield, H. T. 1 W. 4.*—1 B. & Ad. 912.—Upon appeal against an order of two justices, whereby *Sarah Hughes*, single woman, was removed from *Woodthorpe* to *Northwingfield*, the sessions confirmed the order, subject to the opinion of this Court on the following case:—The pauper was bona fide hired as a housekeeper by *H. H.*, in *Northwingfield* in *October* 1810, by an agreement in writing for a year, at 40l. per annum wages. She entered into the service in pursuance of her agreement, and staid in the same (in the appellant parish) until *February* following, when *Mrs. H.* returned home, and she then left. Some time after she had been in

A female pauper having proved that she was hired for a year by contract in writing, which was lost; the appellants proposed to shew by her cross-examination that she had agreed not

only to serve but to cohabit with her master: it being already in evidence that she had in fact cohabited with him during her residence in his family under the hiring: the sessions refused the evidence, on the ground that no proof of a consideration which did not appear on the written agreement, was admissible: Held, that the evidence ought to have been received, for the purpose of ascertaining whether the consideration for the hiring was wholly or in part cohabitation.

Mr. H.'s service, she began to sleep with him. No agreement was made on this subject before she came into the service. She performed all the duties of a housekeeper, and lived with the other servants, and sometimes paid for articles wanted in the house, and was repaid by Mr. H. Upon leaving Mr. H.'s, she went to *London*, and shortly afterwards Mr. and Mrs. H., came to *London*, and he hired her a second time, by a written agreement, for a year, as a servant, at the same wages as under the first agreement. According to this contract she entered again into Mr. H.'s service, in the appellant parish, and served him there for many years, and until he died, living in and managing his house and superintending his servants precisely as under the first hiring. She received her wages, but at times, from necessity, expended a part of them in paying the expenses of Mr. H.'s house; and she provided herself with clothes. The former cohabitation between her and her master was continued. The second written agreement having been lost, and the loss of it proved, the pauper gave parol evidence of the terms of it to the effect before stated. The appellants then proposed to cross-examine her, for the purpose of proving that the contract of hiring was founded in part upon the pauper's agreement to cohabit with her master, in which case the hiring would be "turpis contractus," and could not confer a settlement. The respondents objected, that no evidence ought to be received of a consideration that did not appear upon the written agreement, and the Court concurred in the objection, and refused to receive the evidence. The question reserved was, whether the evidence ought to have been admitted or not.—Lord TENTERDEN C. J. This contract may have been either a contract for service or for cohabitation or for both. In the first case a settlement would clearly be gained by a service under it; in the second it would be clearly void, and no settlement could be gained if it were for both, then it is said that the contract is divisible, and good for so much as is legal but void for the residue. As to that it is unnecessary to say anything at present. The evidence should have been received to ascertain the nature of the contract, and the case must be therefore sent back to the sessions.—The rest of the Court concurred.—Case sent back to sessions.

SETTLEMENT BY APPRENTICESHIP.

Of the binding necessary to gain a Settlement.—2 Bott, pl. 516.

The 56 G. 3. c. 139. s. 11. recited, that the salutary provisions enacted by the 43 Eliz. were frequently evaded in the binding out of poor children, and that the premium of apprenticeship was clandestinely provided by parish officers,

146. *Rex v. Stoke Damerel, M. T. 8 G. 4.* — 7 B. & C. 563. — Upon appeal against an order of two justices, whereby *Jane Coleman* was removed from the parish of *Stoke Damerel* to the parish of *Charles*, in the borough of *Plymouth*, both in the county of *Devon*; the sessions quashed the order, subject to the opinion of this Court, on the following case:—The pauper, *Jane Coleman*, daughter of *Thomas Coleman*, of the parish of *Stoke Damerel*, in the county of *Devon*, was bound an apprentice on the 16th October 1823, to *Jeremiah Ellis*, of the parish of *Charles*, within the borough of *Plymouth*, in the said county. The indenture, which was on a 1l. stamp, was executed by the master, the pauper, and her father, but not by the overseers of the poor of the parish of *Stoke Damerel* (who were not parties thereto) and the following allowance was written on the mar-

gin of the same :—" *Devon* to wit ; We, whose names are hereunder written, justices of the peace for the county aforesaid, whereof one is of the quorum, do consent and allow to the putting forth *Jane Coleman* an apprentice, according to the intent and meaning of the said indenture." This allowance was signed by *E. Lockyer* and *S. Pym*, two justices of the peace for the county of *Devon*, but was not under their seals. Upon the binding of *Jane Coleman* by the indenture, an expense was incurred by the public parochial funds of *Stoke Damerel*, (i. e.) the sum of 9*l.* being the consideration-money mentioned in the indenture ; and a further sum, being the costs and charges attending the binding. No notice was given to the overseers of the poor of the parish of *Charles*, (or to the guardians of the poor of *Plymouth*, or to any of them, of the intention to bind out such apprentice) previous to the binding. *Plymouth* is a borough, situate in the county of *Devon*, having justices who have exclusive jurisdiction therein. The pauper resided in service under this indenture with *Ellis*, in the parish of *Charles, Plymouth*, from the date of the indenture until she was discharged from further service under it, on the 3d July 1826, by two magistrates.—BAYLEY J. I do not know how to get rid of the words of this section of the act of parliament, and where the legislature in a very modern act of parliament have used words of a plain and definite import, it is very dangerous to put upon them a construction, the effect of which will be to hold that the legislature did not mean that which they have expressed. This act was passed to regulate the binding of parish apprentices. The early sections apply altogether to binding by parish officers, but as there might be instances in which the parishes officers were not ostensibly the parties binding, although they lent their influence and furnished the means out of the parochial funds by which the binding was effected, it occurred to the legislature that it might be expedient to make some provision for that class of cases, and the eleventh section was introduced for that purpose. It begins with a new recital, as if it were altogether a new enactment, and one to which the former sections did not apply : "Whereas the salutary provisions enacted by an act of the 43 *Eliz.* are frequently evaded in the binding out of poor children, and the premium of apprenticeship, or a part thereof, is clandestinely provided by parish officers, who are thus enabled to bind out poor children without the sanction of justices of peace." The mischief, therefore, recited, was, that the provisions of the 43 *Eliz.* were evaded in cases where parish officers were not the ostensible, though the substantial parties binding, and they were thereby enabled to bind out poor apprentices without the sanction of justices. It then enacts, "that no indenture of apprenticeship, by reason of which any expense whatever shall at any time be incurred by the public parochial funds, shall be valid and effectual, unless approved of by two justices of the peace, under their hands and seals, according to the provisions of the said act and of this act." This is a case in which expense has been incurred by the public parochial funds, and, therefore, it is within the spirit and the words of the act ; and, the indenture not having been approved of by two justices, under their hands and seals, is not valid and effectual. The words, "according to the provisions of the said act, and of this act," reddendo singula singulis, mean that there shall be such approbation by the justices as the 43 *Eliz.* and the 56 *G. 3. c. 139.* require. Now, the latter statute requires

who were thus enabled to bind out poor children without the sanction of justices of the peace, and then enacted, "That no indenture of apprenticeship, by reason of which any expense whatever shall at any time be incurred by the public parochial funds, shall be valid and effectual, unless approved by two justices of the peace under their hands and seals, according to the provisions of the said act and of this act :—" Held, that in order to make an indenture by reason of which any expense had been incurred by the public parochial funds valid and effectual, the approval of two justices should be under their hands and seals, and that such and indenture, approved of by two justices under their hands only, was void and not voidable, and that no settlement was gained by serving under it.

that the indenture shall be approved of by the justices under their seals. I cannot tell why the legislature required that the indenture should be approved of under their seals; but they have so required it in express terms, and I cannot say that they did not mean that which they have so expressed. It has been contended, that the words *not valid and effectual* are to be construed so as to make the indenture not absolutely void, but voidable only at the option of either party; and that, therefore the indentures will not be valid and effectual if either party dissent during the period of apprenticeship, but that if there be no such dissent, they will be valid and effectual. I think it was the intention of the legislature that there should be such an allowance by the justices, in the first instance, as to make the indenture binding ab initio, and not voidable at the option of either party. For otherwise it would be at the option of the master or of the apprentice to determine the indentures at any period within the seven years. The master might, therefore, after six years and three quarters' service, at his own election, deprive the apprentice of the benefit of his indentures; or the apprentice, on the other hand, might, after he had received instruction sufficient to enable him to act for himself, also determine the indentures to the prejudice of his master. I think that that would be an unreasonable construction to be put upon those words, and that the true construction of them is, that the indentures shall be void ab initio, unless they have the approbation of the justices under their hands and seals.—HOLROYD J. I think that this was not a binding by the parish officers, within the early sections of the statute, but that it was a binding within the meaning of section 11. That section enacts, not merely that no *parish* indenture, but that no indenture shall be valid and effectual unless it has the approbation of two justices under their hands and seals. It has been argued, that it is not requisite that the approbation of the justices should be under their hands and seals, but that those things shall be done which are required by the statute of the 43 *Eliz.* and by the earlier sections of this act; and that they not requiring that the allowance of the justices shall be under their seals, the words, "under their hands and seals," are to be qualified by the latter words, "according to the provisions of the said act and of this act." It seems to me that the true construction of *those words* is, that the approval shall be such as is required by the 43d *Eliz.* and by the former sections of the 56 G. 3. c. 139. and shall also be under the hands and seals of the justices. Then, it has been contended, that the words "*not valid and effectual*," may be construed to make the indenture voidable only; upon that point I have entertained some doubt. But it is admitted, that it was competent to either party to avoid such an indenture before the service expired. Now, here it was avoided, for the pauper was discharged from her service by an order of two magistrates. Assuming that the indentures were voidable only, still, as they were avoided, no settlement could be gained. As to the question whether the indentures were absolutely void or voidable only, it is to be observed, that this statute says not merely that they shall not be valid, but that they shall not be valid and effectual. The case, therefore, is different from others, where it has been held, in order to prevent mischief, that the word void shall be construed voidable. But without deciding that point, I think that as the indenture was avoided by the parties, it was thereby rendered not valid and effectual, and that no settlement was

gained by the service under it.—LITLEDALE J. No settlement was gained by the service under this indenture. The law undoubtedly makes a difference between instruments under seal and those which are not, and regards the former as acts done with more solemnity; and the legislature may have required the justices to allow the indentures under seal, in order to make them treat the act of allowance as a matter of importance. It has been argued, that the words “and seals,” are directory. I think they are not, for you must take the whole section together. It is quite clear that the whole is not directory, and one part cannot be directory if the whole is not so. It is argued that this indenture, though it may not be effectual for all purposes, is sufficient for the purpose of enabling the pauper to gain a settlement. That is a consequence resulting from serving under a valid indenture of apprenticeship. Here the act of parliament says, that no indenture of apprenticeship shall be valid and effectual, unless approved of by the justices under their hands and seals; and that being so, the allowance not having been under the seals of the magistrates, this indenture was not valid and effectual, and all the consequences which would otherwise have resulted from it, are prevented, and the service under it did not confer a settlement. In the fifth section it was necessary to take away the power of gaining a settlement in express terms, as the provisions are affirmative; but in section 11 they are negative, and, therefore, that was not necessary. If the indenture is destroyed by the enactment that it shall not be valid unless approved by the justices under their hands and seals, there was no necessity for a special enactment, that no settlement should be gained by service under it.—Order of sessions confirmed.

147. *Rex v. Great Sheepy*, *E. T. 9 G. 4.*—8 *B. & C. 74.*—Upon appeal against an order of two justices, whereby *E. Burton*, his wife, and children, were removed from the parish of *Great Barford* in the county of *Oxford*, to the parish of *Great Sheepy* in the county of *Leicester*, the sessions confirmed the order, subject to the opinion of this Court on the following case :—The pauper was bound apprentice by the churchwardens and overseers of the poor of *Great Sheepy*, by a parish indenture of the 28th of *April* 1807, (the pauper being then a poor child of the parish, aged seven years or thereabouts,) to *George Wilkins* of *Deddington*, in the county of *Oxford*, butcher; with him to dwell and serve from the day of the date of the indenture, until the apprentice should accomplish his full age of twenty-one years. The indenture was in the usual form, and was duly executed by all the parties thereto, and in the margin thereof the magistrates duly signified their consent. The father of the pauper, whose last place of settlement was *Great Sheepy*, had died four or five years before the date of the indenture, and thereupon his widow had gone with the pauper to reside with her father, *G. Wilkins*, at *Deddington*, the parish of *Great Sheepy* relieving the widow till the pauper was seven years old. The parish then proposed to the mother to put the pauper out apprentice to *Measham* cotton works, and told her that they should no longer relieve her, unless the pauper was apprenticed. Upon this the mother requested the officers to bind the pauper to her father, *George Wilkins*, in order that the boy might not be removed from her. The parish officers consulted the rector (who was himself a magistrate), as to the propriety of acceding to this request; and having received his sanction, they and the mother and *Wilkins* met

The parish officers of *A.* bound a pauper apprentice to his grandfather, who was described as a butcher. Indentures were executed with the sanction of two justices. The grandfather in fact did not carry on the trade of a butcher, but he and the mother colluded together, and fraudulently imposed him on the justices and the parish officers as a proper master for the pauper: Held, that there having been no fraud in the parish officers the pauper gained a settlement by serving under this indenture.

together, and went before the justices, without the pauper, for the purpose of binding him. The justices allowed the binding, and the indenture was executed by all parties, and a premium of 6*l.* was paid to *Wilkins* by the parish officers. There was nothing in the appearance of *Wilkins* to excite any suspicion that he was an improper person; and there was not any fraud or collusion on the part of the magistrates, or of the parish officers of the appellant parish. The pauper continued to dwell with *Wilkins* in the parish of *Deddington*, after the execution of the indenture, running errands, and doing whatever he was bid to do, till after he was nine years of age, when he left his grandfather, and never afterwards returned to him; but after the binding he continued to go to school by day, as he had gone before, except in the holidays; and he never was informed, nor did he know that he had been bound apprentice, neither did he ever receive any instruction in the trade of a butcher. Indeed, though *G. Wilkins*, the master, had been a butcher, it did not appear that he had ever killed any cattle after the binding, and he was a man in needy circumstances. Upon the above facts the sessions founded their judgment, that the mother of the pauper and the grandfather had colluded together, and fraudulently imposed the grandfather upon the parish of *Great Sheepy* as a proper master for the child; and on the ground of this fraud alone held that no settlement was gained under the indenture, though they acquitted the parish officers of *Great Sheepy* of all participation in the fraud, and found that they acted *bonâ fide* in the matter.—Lord TENTERDEN C. J. The sessions have found that a fraud was committed, but not by the parish officers. It appears that an imposition was practised on them by the master. If it were competent after a great lapse of time to inquire into the fact, whether fraud had been committed in the binding out of an apprentice by any of the parties to the indentures, a vast number of settlements might be disturbed and great expense incurred. The law by requiring in the case of a parish apprentice, that the master shall be approved of by two justices, has endeavoured to provide that there shall be a proper master, and that every thing shall be done correctly; and where the justices have sanctioned a binding, and there has been no fraud in the parish officers, the safest course for us is to say, that service after such a binding confers a settlement, though the master may have imposed upon the justices. The court of quarter sessions have mistaken the effect of the fraud found by them. Even supposing that they were right in finding such fraud, still it will not prevent a settlement.—Order of sessions quashed.

An indenture, by which an apprentice was bound for seven years, to serve A. B. for the first four years, and his own father for the last three, to learn two different trades, is a valid indenture, and requires only one stamp.

148. *Rex v. Louth*, E. T. 9 G. 4.—8 B. & C. 247.—Upon appeal against an order of two justices, whereby *B. Furnish*, his wife and children, were removed from the parish of *Louth*, in the parts of *Lindsey* in the county of *Lincoln*, to the township of *Baildon*, in the parish of *Otley* in the West Riding of the county of *York*, the sessions discharged the order, subject to the opinion of this Court on the following case:—The pauper, *B. Furnish*, being legally settled in the township of *Baildon*, in the county of *York*, was in the year 1789 bound apprentice by indenture, upon which there is only one 5*s.* stamp (and of which the following is a copy), duly executed by all parties, to his father, *Thomas Furnish*, a wool-comber, and to *J. Grozer* a weaver, both then residing in the township of *Leeds*, in the county of *York*, but not copartners. “This indenture made the

" 1st day of *January* 1780, between *John Grozer* of the parish of *Leeds*, in the county of *York*, weaver, and *T. Furnish*, wool-comber, of the one part, and *B. Furnish*, of the parish aforesaid, of the other part; witnesseth, that *B. Furnish* hath of his own free will and with the consent of his parents put and bound himself apprentice to and with the said *J. Grozer* and *T. Furnish*, and with them after the manner of an apprentice to dwell, remain, and serve from the date hereof, for, during, and until the term of seven years thence next following be fully completed and ended." There then followed the usual covenants by the apprentice, well and faithfully to serve his masters; and also covenants by *Grozer*, that he and *T. Furnish* should teach the apprentice the trade of stuff-weaving and wool-combing, and that *Grozer* should provide the apprentice meat, drink, washing, and lodging, for the first four years, and work during that period; and that the apprentice should serve the latter three years with *T. Furnish*; and that *Grozer* should be absolutely free from the apprentice at the end of four years from the date of the indenture. The pauper served and resided under such indenture at *Leeds* for four years and three months, and then removed to *Louth*.—BAYLEY J. It was once supposed that the effect of the statute of the 5 *Eliz. c. 4.* was to avoid all indentures by which the apprentice was bound for any period less than seven years. The effect of that statute is that certain benefits result from an apprenticeship for seven years, which do not obtain in other instances. But it has been decided that indentures binding for a shorter period are not void, but voidable only, if the parties themselves think fit to take advantage of it, and, therefore, a binding for four years has been held to confer a settlement. It seems to me that this is a valid indenture, and sufficient for the purpose of constituting an apprenticeship for seven years. In ordinary cases the party is bound for seven years to serve one master and to learn one trade. But the knowledge of one trade may materially assist him in learning another, and it may be for the benefit of the apprentice that he should learn two trades, and it may be desirable to contract with two masters to teach him both their trades. Suppose the father of the apprentice to have been desirous to bind his son so that he might acquire the best information in two trades, and be under proper control for the whole seven years: it was not unreasonable, in the first instance, that he should make a bargain with two different persons that his son should be taught two different trades; that he should serve one master for four years in order to learn one trade, and the other three years to learn the other trade. The father, perhaps, may have found it difficult to get one master to take his son for seven years, and may have found one willing to take him for four, provided, in the first instance, he bound himself to take the apprentice at the end of four years, when his term with the first master was to expire. And if that was the agreement originally made between the parties, then at the expiration of the first four years the second master, who in this instance was the father of the apprentice, would not take the apprentice by assignment, but by virtue of the indenture. It seems to me that it was reasonable to make a stipulation, in the first instance, that the apprentice should be bound during the seven years to the two masters to learn two trades, and that that stipulation may be considered to be incorporated in the indenture. The whole was one transaction, and

the indenture, therefore, required only one stamp. The order of sessions must, therefore, be confirmed.—HOLROYD J. I am of the same opinion. The object of the contract of apprenticeship is, that the apprentice shall be taught for a certain period. The usual practice is to bind the apprentice for seven years to one master for the purpose of being taught one trade. It will be a good contract of apprenticeship if the apprentice be bound to two masters successively to learn two different trades. And I think such an indenture having only one stamp is not avoided by any provision of the stamp-act, unless it be shewn that the parties, when they adopted that particular form of indenture, thereby intended to evade the payment of duties which by law they otherwise would have been bound to pay. Unless that be shewn, I think we should construe the indenture so as not to avoid it. Now if it was *bonâ fide* agreed between the father and the first master, with a view that his son should have all the benefits of serving a seven years' apprenticeship, that he the father should take the son at the end of the first four years, he would take him under the indenture, and no new stamp would be necessary. The duty is imposed upon every indenture, and not with reference to the number of masters whom the apprentice is to serve, or the number of trades he is to learn. No fraud being found, I think there was but one binding and one indenture. There may have been two bindings in one sense, so far as the masters were concerned, but so far as the apprentice was concerned there was but one; he was bound by one indenture to serve one master for four and another for three years.—LITLEDALE J. I think the stamp in this case is sufficient. Suppose that before the statute of 5 *Eliz.* c. 4. a parent, intending that his son should learn two trades connected with each other, as those of a wool-comber and weaver are said to be in this case, or two trades entirely unconnected with each other, had agreed with two several persons that one of them should teach his son one trade, and the other another trade, there clearly would be no objection at common law to the two persons taking the apprentice successively, and teaching him their respective trades. The statute of 5 *Eliz.* c. 4. confers certain privileges on persons who serve an apprenticeship for seven years. But it has been decided that it does not render void all other contracts of apprenticeship. Independently of the stamp act, this indenture is therefore valid. But by that statute the legislature have required that a duty shall be paid on every indenture, not that a distinct duty shall be paid in respect of each master the apprentice is to serve, or each trade he is to learn. Here the duty required by the act has been paid on the indenture. I think that this instrument does not operate as two indentures, or as an indenture and assignment, so as to require two stamps. There was no intention to evade the payment of the stamp duties. And as this would be a good indenture at common law, and is not avoided by the statute of *Elizabeth*, and as the parties might have entered into the engagement at common law by one indenture, I cannot say that it operates as two. It has not the effect of two bindings, but relates to one transaction, the feeding and teaching of one apprentice. I think, therefore, that it operates as one binding. And if it was originally agreed between the father and the first master that the former should take the apprentice at the end of the first four years, he took the apprentice by

virtue of the indenture, and not of an assignment.—Order of sessions confirmed.

149. *Rex v. Mattishall, M. T. 9 G. 4.—8 B. & C. 733.*—Upon an appeal against an order of two justices, whereby *J. Taylor*, and *Anne*, his wife, were removed from the hamlet of *Heigham*, in *Norwich*, in the county of *Norfolk*, to the parish of *Mattishall*, in the same county, the sessions confirmed the order, subject to the opinion of this Court on the following case:—*Jeremiah Taylor*, on the *Sunday* fortnight before the *Christmas* 1820, when he was living at *Mattishall* with his father and mother, was informed by a person named *Hudson*, that *Joseph Middleton*, who was a blacksmith, living at *Wymondham*, wanted a lad. *J. Taylor* went to *Middleton's* the next day, when they agreed that *Taylor* should go on the *Tuesday* following, and should stay a month upon liking, and if they liked each other, that he should be apprenticed to him for three years. *Taylor* went to *Middleton's* on the *Tuesday* following, and continued with him for a month. At the expiration of the month the indenture was executed. It was for three years; it was signed by the master, and attested by the parish officers; but it was not approved of by two justices. *Taylor* served under the indenture for three years, living during all that time with *Middleton*. *Middleton*, before the indenture was executed, said the pauper should have some better clothes, and the pauper thereupon applied to the parish officers of *Mattishall*. The parish officers, who are the attesting witnesses to the indenture, agreed to give him 2*l.* at the execution of the indenture, to buy clothes: and 2*l.* more for the same purpose at the end of a year. They gave the first 2*l.* to the pauper's mistress, who laid it out for him in the purchase of clothes. At the end of the year the other 2*l.* were paid to the pauper. — *BAYLEY J.* It seems to me that the order of sessions is right. The enacting part of the eleventh section of the 56 *G. 3. c. 139.* goes beyond the recital. If it had not, I could not have said that the money was paid as a premium. But the master, before the execution of the indenture, requires that the boy should have better clothes, and the pauper then applied to the parish officers, and they supplied him with 2*l.*, and agreed to give him 2*l.* more. It has been said, that it does not appear that the money was paid out of the parish funds. If that was not so, it might easily have been proved. The sessions have found that it was paid by the parish officers. That *prima facie* implies, that it was paid by them out of funds belonging to them in that character. We may assume, therefore, that the sessions had premises whereupon to find, that the money was contributed by the parish officers, not out of their private funds, but out of the parish funds. If the fact be so, then we must look to the words of the statute 56 *G. 3. c. 139. s. 11.* It recites that the salutary provisions of the 43 *Eliz.* are frequently evaded in the binding out poor children apprentices, and the premium of apprenticeship, or a part thereof, is clandestinely provided by parish officers, who are thus enabled to bind out such poor children without the sanction of justices of the peace; and then enacts, "that no indenture of apprenticeship, by reason of which any expense whatever shall at any time be incurred by the public parochial fund, shall be valid and effectual unless approved of by two justices," &c. Here the money was paid, because

Before the execution of an indenture, the master said that the intended apprentice should have better clothes. The apprentice then applied to the parish officers, who agreed to give him 2*l.* on the execution of the indenture, for the purpose of buying clothes, which they did accordingly: Held, that the money paid by the parish-officers was an expense incurred by reason of an indenture of apprenticeship, within the meaning of the 56 *G. 3. c. 139. s. 11.*, and, therefore, that the indenture required the assent of two justices.

the master objected to taking the apprentice unless he had clothes. It was, therefore, an expense incurred by the parish, by reason of the indenture, within the very words of the act of parliament. The indenture ought, therefore, to have been approved by two justices. That not having been done, the indenture is void, and the service under it did not confer any settlement.—LITLEDALE J. We must assume from the language of the case, that the parish officers advanced the money out of funds belonging to them as parish officers. The sessions having come to that conclusion, this is a case within the words of the act of parliament.—PARKE J. It is perfectly clear, that the money advanced to the pauper was an expense incurred by the public parochial funds, within the words of the enacting part of the eleventh section of the 56 G. 3. c. 139., though it was not advanced as a premium within the meaning of the recital. I think, also, that this is a case within the mischief contemplated by the legislature. By the statute 43 Eliz. c. 2., the assent of two justices was required in cases where the binding was by the parish officers. But if they secretly advanced the whole or part of the premium (provided they were not the binding parties,) the assent of the justices was unnecessary. That was the mischief which it was the object to remedy. The statute 56 G. 3. c. 139. s. 11. requires the assent of the justices in all cases where the parish officers interfere in the binding out of poor children, by advancing money for that purpose. This is a case, therefore, falling within the mischief contemplated by the legislature.—Order of sessions confirmed.

The statute
56 G. 3. c. 139.
s. 2. enacts,
that in all cases
where the resi-
dence or esta-
blishment of
business of the
person to whom
any child shall
be bound, shall
be within a dif-
ferent county
from that within
which the place
by the officers
whereof such
child shall be
bound shall be
situated, and in
all other cases
where the jus-
tices of the
peace for the
district or place
within which
the place by the
officers whereof
such child shall
be bound shall
be situated, and
who shall sign
the allowance
of the indenture
by which such
child shall be

150. *Rex v. Shipton*, M. T. 9 G. 4.—8 B. & C. 772. — Indictment for disobeying an order of justices. The indictment stated, that on the 2d of January 1826, *W. Ryley* was an overseer of the poor of the parish of *Hanbury*, in the county of *Stafford*; and that on the day and year aforesaid, *Ryley* and *T. Robotham* were the churchwardens; and that *G. Hinckley* and *T. Orme* were the overseers of the poor; and that *Ryley*, *Hinckley*, and *Orme* were, on the day and year last aforesaid, the major part of the churchwardens and overseers of the poor of *Hanbury*, in the said county of *Stafford*; and that the defendant, late of the parish of *Scropton* and *Foston*, in the county of *Derby*, yeoman, before and on the day and year aforesaid, was, and during all the times after mentioned, and from thence for the space of one year then next following, continued to be the occupier of certain lands situated in the parish of *Hanbury*, in the county of *Stafford*; and that the place of residence of the defendant, as also the establishment in trade and place of business of the defendant, was during all the time aforesaid at *Scropton*, within the parish of *Scropton* and *Foston* aforesaid, in the county of *Derby* aforesaid, and within the distance of forty miles from the parish of *Hanbury* aforesaid; that *Hinckley* and *Orme*, so being such overseers as aforesaid theretofore, to wit, on, &c. at, &c. with the assent of Sir *O. Mosley*, Bart. and *T. K. Hall*, Esq., two justices of the peace in and for the county of *Stafford*, dwelling near the said parish of *Hanbury*, did see fit and convenient, and did appoint that *Charles Vernon*, aged nine years, a poor child of the parish of *Hanbury*, whose parents were not by the said churchwardens and overseers of the poor thought able to keep and maintain him, should be bound apprentice to the defendant, so being such occupier of land as aforesaid, and having his place of residence and establishment in trade and place of

business at *Scropton*, in the parish of *Scropton* and *Foston* aforesaid, and within a reasonable distance and within the distance of forty miles from the parish of *Hanbury* aforesaid, until *Vernon* should accomplish his full age of twenty-one years, according to the statute in that case made and provided; that on the day and year aforesaid, at *Hanbury*, in the county of *Stafford*, and before *Vernon* was bound apprentice by the said overseers of the poor of the parish of *Hanbury* to the defendant, he, *Vernon*, was carried before the said Sir *O. Mosley* and *T. K. Hall*, Esq., so being such justices as aforesaid; and that they examined the father and mother of *Vernon*, and enquired into the propriety of binding *Vernon* apprentice to the defendant, to whom it was proposed by the overseers of the said parish of *Hanbury* to bind the said *Vernon*; and that the said Sir *O. Mosley* and *T. K. Hall*, so being such justices, did particularly enquire and consider whether the defendant resided or had his place of business within a reasonable distance of the said parish of *Hanbury*, to which *Vernon* belonged, having regard to the means of communication between *Hanbury* and *Scropton* and *Foston*, where the defendant so resided and had his place of business; and whether there were any circumstances which should make it fit in their judgment that the said child should be placed apprentice at a greater distance; and did also enquire into the circumstances and character of the defendant; and that they, Sir *O. M.* and *T. K. H.*, did upon such examination and enquiry think it proper that *Vernon* should be bound apprentice to the defendant; and that they, Sir *O. M.* and *T. K. H.*, so being such justices, made an order under their hands and seals, bearing date, &c. as aforesaid, whereby they declared that the defendant was a fit person to whom *Vernon* might be bound an apprentice, and thereupon did thereby order that the said overseers of the poor of the said parish of *Hanbury* should be at liberty to bind *Vernon* apprentice accordingly; and that they, Sir *O. M.* and *T. K. H.*, Esq. did afterwards at the parish of *Hanbury*, in the county of *Stafford*, deliver the said order for binding *Vernon* apprentice to the defendant, to the said overseers of the poor of the said parish of *Hanbury* aforesaid, as the warrant for binding *Vernon* apprentice; that after the making of the order they signed their allowance of the indenture of apprenticeship thereafter mentioned, for the binding of *Vernon* by the said churchwardens and overseers of the poor of the parish of *Hanbury* to the defendant, before the same had been executed by any of the other parties thereto; that on the 7th of *January*, 1826, at *Egginton*, in the county of *Derby*, the indentures were allowed by the said Sir *O. Mosley*, *Bart.*, *Ashton Nicholas Mosley*, and *T. K. Hall*, Esquires, then and there being three of his majesty's justices of the peace in and for the county of *Derby*, and dwelling near to the parish of *Scropton* and *Foston*, in the said county of *Derby*; that before the last-mentioned allowance of the indentures, to wit, on the 2nd of *January*, 1826, due notice was given to the overseers of the parish of *Scropton* and *Foston*, of the intention of the overseers of the said parish of *Hanbury* to bind *Vernon* apprentice within the parish of *S. and F.*, and to apply for the said last-mentioned allowance by the said justices; and that the notice was duly proved before Sir *O. Mosley*, *A. N. Mosley*, and *T. K. Hall*, before they signed the indentures: that *Ryley*, so being such churchwarden, and *Hinckley* and *Orme*, so being such overseers as aforesaid, and *Ryley*, *Hinckley*, and

bound, shall not have jurisdiction, every indenture by which such child shall be bound shall be allowed, as well by two justices of the peace for the county or district within which the place by the officers of which such child shall be bound shall be situated, as by two justices of the peace for the county or district within which the place shall be situated wherein such child shall be intended to serve: Held, that in such case the indenture must be allowed by four distinct persons, two of them being justices of the county from which the apprentice is to be bound; and the other two being justices of the county into which he is to be bound.

Orme, so being the major part of such churchwardens and overseers as aforesaid, (to wit, on the 7th of *January*, in the year aforesaid, at *Hanbury*, in the county of *Stafford*.) caused two parts of a certain indenture to be prepared, bearing date the same day and year last aforesaid, whereby it was witnessed that *Ryley*, as one of such churchwardens of *Hanbury*, and *Hinckley* and *Orme*, as such overseers of *Hanbury*, with the consent of two of his majesty's justices of the peace for the county of *Stafford*, whose names were thereunto subscribed, that is to say, the said Sir *O. Mosley* and *T. K. Hall*, so being such justices in and for the county of *Stafford*, and of the said Sir *O. M.*, *A. N. M.*, and *T. K. Hall*, Esqrs., then being three of his majesty's justices of the peace in and for the county of *Derby*, whose names were thereunto subscribed, and in pursuance of an order in writing thereunto annexed, made by and under the hands and seals of Sir *O. Mosley* and *T. K. Hall*, Esq., justices of the peace of the said county of *Stafford*, in pursuance of the statute mentioned therein, bearing date the 2nd of *January*, 1826, had put and placed *Vernon* apprentice to the defendant, of the parish of *Scropton* and *Foston*, in the county of *Derby* aforesaid, with him to dwell and serve from the day of the date of the indenture until twenty-one, &c. &c.; that *Ryley*, so being one of the churchwardens, and *Hinckley* and *Orme*, so being overseers of the poor, and *Ryley*, *Hinckley*, and *Orme*, so being the major part of such churchwardens and overseers of the poor of the parish of *Hanbury*, in the county of *Stafford*, then and there respectively signed and executed one part of the said indenture, which was then and there allowed and confirmed by Sir *O. Mosley*, *A. N. Mosley*, and *T. K. Hall*, so being such justices for the counties of *Stafford* and *Derby* as aforesaid, who did then and there consent to the putting forth *Vernon* apprentice; of all which said several premises the defendant, so being such occupier of lands as aforesaid, and so residing and having his establishment in trade and of business as aforesaid, afterwards, to wit, on the day and year last aforesaid, at *Scropton* aforesaid, in the county of *Derby*, had notice. The count then stated the tender of the apprentice, together with the indenture so executed and allowed, to the defendant; a request by *Orme*, so being overseer of *Hanbury*, to receive him, and to execute the other part of the indenture, and the defendant's refusal. The second count stated, that on the 7th of *January*, 1826, *Vernon*, a poor child, being settled in the parish of *Hanbury*, in the county of *Stafford*, whose parents were by the churchwardens and overseers of the poor of the last-mentioned parish considered unable to keep and maintain *Vernon*, was, by *Ryley*, *Hinckley*, and *Orme*, the major part of the churchwardens and overseers of the poor of the last-mentioned parish, and by the consent and allowance of Sir *O. M.*, Bart., and *T. K. Hall*, two of his majesty's justices of the peace in and for the county of *Stafford*, and of the said Sir *O. M.*, *A. N. Mosley*, Esq., and *T. K. Hall*, three of his majesty's justices of the peace for the county of *Derby*, by indenture duly executed, duly bound apprentice to the defendant of the parish of *Scropton* and *Foston* in the said county, the defendant then being an occupier of lands in the said parish of *Hanbury*, and having his place of residence and establishment of business at *Scropton*, in the parish of *Foston* and *Scropton* aforesaid, and within forty miles of the parish of *Hanbury* aforesaid,

until *Vernon* should attain twenty-one years of age; that the defendant was tendered the apprentice, together with the indenture, and request made to receive him; but that he refused to receive him, or to execute the other part of the indenture, as in the first count. General demurrer.—BAYLEY J. The words of the statute 56 G. 3. c. 139. s. 2. are, “that every indenture shall be allowed, “as well by two justices for the county or district within which the “place by the officers of which such child shall be bound shall be “situated, as by two justices for the county or district within which “the place shall be situated wherein such child shall be intended to “serve.” The words, therefore, require that the indenture shall be allowed as well by two justices of one county as by two justices of the other. The statute does not in terms say that the indenture shall be allowed by two justices of each county; but that it shall be allowed as well by two justices of the one as by two justices of the other. I cannot assign any good reason why the justices having jurisdiction in the two counties should be different persons; but I think it dangerous to speculate on the intention of the legislature. The safer rule of construction is to abide by the words of the statute. If the language used by the legislature be such as to imply that the indenture shall be allowed by two justices of the first county, and also by two other persons, being justices of the other county, we must give effect to those words. I think the words, *primâ facie*, import that the justices who allow the indentures in the second county shall be different persons from those who allow them in the first; and there is nothing in the other parts of the act to shew that such was not the intention of the legislature. Giving these words, therefore, their fair grammatical construction, I think that the indenture mentioned in this indictment ought to have been allowed by two justices of the county of *Derby*, being different persons from the two justices of the county of *Stafford*, who first allowed it; and that for want of such allowance the indenture is void; and, consequently, that the indictment against the defendant for refusing to receive the apprentice cannot be supported. The judgment of the Court must, therefore, be for the defendant.—LITLEDALE J. I am of the same opinion. I cannot collect from the statute that it was the intention of the legislature, that the magistrates of the two counties should act as a check upon each other; and I cannot see any reason why the magistrates should be different persons. I see no reason why, when two justices have jurisdiction to consent to the binding of apprentices by one parish to another in the same county, the same justices should not also have jurisdiction to consent to the binding of them in a case where the parishes are in different counties. But it seems to me, nevertheless, that the words of this act of parliament do require that the magistrates of the two counties should be different persons. It enacts, that the indentures shall be allowed as well by two justices for the county or district within which the place by the officers of which such child shall be bound shall be situated, as by two justices for the county or district within which the place shall be situated wherein such child shall be intended to serve. Now, the magistrates of the two counties might be, and, generally speaking, are, two different persons. That being so, giving these words a grammatical construction, they seem to me to require that the magistrates of the two counties shall be different persons. I think, therefore, that the indenture should have

been allowed by two justices of the county in which the binding parish is situate, and also by two justices of the county in which the parish in which the apprentice was to serve is situate.—PARKE J. I think that we are bound by the words of the act of parliament, to hold that, in a case where the two parishes are situate in different counties, the indenture must be allowed by four justices, two of them being justices of the county where the binding parish is situate, and the other two being justices of the county in which the parish wherein the apprentice is intended to serve is situate.—Judgment for the defendant.

A married woman, on binding her son, an illegitimate child, an apprentice, agreed with the intended master, that 10*l.* should be the premium inserted in the indenture, but that he should receive something more. The husband of the mother of the apprentice paid the 10*l.*, and the mother, without her husband's knowledge, paid the master a further sum of two guineas and a half: Held, that there being no valid contract to pay more than the sum of 10*l.*, the full sum received, given, paid, secured, or contracted for at the time of the execution of the indenture, was inserted in the indenture within the meaning of the statute 8 Anne, c. 9. s. 39. that it was valid, and that a settlement was gained by service under it.

151. *Rex v. Bourton-upon-Dunsmore*, T. T. 10 G. 4.—9 B. & C. 872.—Upon an appeal against an order of two justices, whereby H. Webb, his wife and children, were removed from the parish of *Stretton-upon-Dunsmore*, in the county of *Warwick*, to the parish of *Bourton-upon-Dunsmore* in the same county, the sessions confirmed the order, subject to the opinion of this Court on the following case:—The appellants (the parish of *Bourton*) admitted a *prima facie* settlement by birth in their parish, and then proved that the pauper had served more than forty days in a third parish under an indenture of apprenticeship, bearing date the 26th of April 1813. This indenture, the respondents contended, was void upon the following evidence. The mother of the pauper, who was an illegitimate child, was directed by her husband, who was not the father of the child, to give a premium of 10*l.* and no more. The master required 20*l.* This amount the mother refused to give, but came to a private understanding with the master, that he should receive something in addition to the 10*l.*, but what particular sum did not appear. It was also agreed, that the sum of 10*l.* only should be inserted in the indenture, which was accordingly done. The stepfather paid the premium of 10*l.*, and the mother paid the further sum of two guineas and a-half. Neither the apprentice nor stepfather was privy to the undertaking above mentioned, and never knew that a greater sum than 10*l.* had been paid, but the master was not aware that the agreement by the mother to give more than the 10*l.* was without the authority or privity of her husband. The indenture bore the proper stamp for any sum not exceeding 30*l.*—BAYLEY J. The sum really and *bonâ fide* paid and contracted for was inserted in this indenture. There was no binding agreement, for the payment of any sum beyond that amount. The promise made by the *feme covert* did not bind her.—LITLEDALE J. There was no valid contract by any person to pay more than the sum mentioned in the indenture. And assuming that the contract by the *feme covert* to pay a further sum was binding upon her, there was no contract by her to pay any specific sum. So that it was impossible to insert in the indenture the sum to be paid.—PARKE J. There was no contract to pay any specific sum beyond that mentioned in the indenture.—Order of sessions quashed.

The allowance of an indenture of apprenticeship, to which the parish officers are actual

152. *Rex v. St. Paul, Exeter*, M. T. 10 G. 4.—10 B. & C. 12.—Upon an appeal against an order of two justices, whereby Jane Bishop, a single woman, was removed from the parish of *Saint Paul*, in the city and county of *Exeter*, to the parish of *Tedburn Saint Mary*, in the county of *Devon*, the sessions quashed the order,

subject to the opinion of this Court on the following case:—The pauper, *Jane Bishop*, was in the year 1818, bound an apprentice by the parish officers of *St. Mary* to one *H. Belworthy*. The indenture by which she was bound, was made in pursuance of a previous order of two justices, to which reference was made by its date, and was duly executed by the said parish officers and by the master. An allowance of the same was written at the foot thereof, which was signed by two justices, but was not under seal. On occasion of this binding, an expense of 17s. was incurred by the public parochial funds of the parish of *Tedburn Saint Mary*; namely, 7s. as the costs of preparing the indenture, and 10s. which were given to the master with the pauper. The pauper resided in the parish of *Tedburn Saint Mary*, under this indenture, for about four years.—*BAYLEY J.* now delivered the judgment of the Court, and, after stating the facts of the case, proceeded in substance as follows:—On carefully considering the 56 G. 2. c. 139. (and after conferring with Lord *Tenterden*, who concurs in the judgment I am about to pronounce,) we are of opinion that the first ten sections apply to cases where the parish officers are parties to the indenture of apprenticeship, and the eleventh section where the parish officers do not join in the indenture, but where some part of the expense attending the indenture is defrayed out of the public parochial funds. That this is the meaning of the eleventh section, appears to us to be manifest from the use of the word *clandestinely* in that section. The mischief recited in the preamble to that section is, that the premium, or a part thereof, was *clandestinely* provided by parish officers, who were thus enabled to bind out poor children without the sanction of justices; and for remedying that mischief, it provides that no indenture, by reason of which such expense shall be incurred, shall be valid, unless approved of by two justices under their hands and seals. The first ten sections, which evidently apply to bindings by the parish officers, require that the indenture shall be approved of by two justices under their hands only. Now parish officers cannot be said to provide the premium *clandestinely*, when they join in the indenture. The eleventh section, therefore, can apply to those cases only where they are not parties to the indenture, but where they provide some portion of the premium. The indenture of apprenticeship in this case was one (the parish officers being parties to it) contemplated by the first ten sections. The allowance was signed, though not sealed, by the justices. It is, therefore, a valid indenture, and the pauper gained a settlement by serving under it in the parish of *Tedburn St. Mary*. The order of sessions must therefore be quashed. Order of sessions quashed.

153. *Rex v. St. Peter, Hereford, H. T. 1 W. 4.* — 1 B. & Ad. 916. On appeal against an order of two justices, whereby *Charlotte Stephens*, single woman, was removed from the parish of *Kingston*, in the county of *Hereford*, to the parish of *St. Peter* in the city of *Hereford*, the sessions confirmed the order, subject to the opinion of this Court on the following case:—The pauper, *Charlotte Stephens*, was in *Hereford* gaol, and was tried for felony at the *August* assizes 1825. At the recommendation of the judge who tried her, Dr. *Lye*, the mayor of *Hereford*, undertook to collect a sufficient sum of money to apprentice her. Dr. *Lye* conceiving from something the pauper said, that *Kingston* was her place of settlement, wrote to Mr. *Wall*, the vicar of that parish. Mr. *Wall* wrote in answer, that *Kingston* would not admit that the pauper was a parishioner there; parties, is required by the 56 G. 3. c. 139. s. 1. to be signed by two justices, but need not be under seal; but the allowance of an indenture to which the parish officers are not parties, but in respect whereof some expense has been incurred by the public parochial funds, is required by the eleventh section of that statute to be sealed as well as signed by two justices.

A. intending, from charitable motives, to apprentice a poor person, collected a sum of money for that purpose from several individuals, and among others from the overseers of three different parishes, though there was no

evidence that the person belonged to either; and the sums given by the overseers were charged, and allowed to them, in their respective accounts. With the sums so collected, and with money of his own, A. paid the premium of apprenticeship. The sessions thought that his was not a binding by the parish officers; that the payments by the several parishes were voluntary; and that the indenture was not one within the 56 G. 3. c. 139. s. 11., which would have required the assent of two justices: Held, that that decision was right, and that the 56 G. 3. c. 139. applied to cases where the binding was either directly or indirectly by the parish officers, the first ten sections applying to cases where the parish officers were parties to the indenture, the eleventh to cases where they were not actual parties to the indenture, but procured the binding.

but he sent Dr. *Lye* 4*l.* Dr. *Lye* received 5*l.* from Lord *Somers*, and 1*l.* each from the parishes of *St. John Baptist*, *All Saints*, and *St. Nicholas*, in the city of *Hereford*, and other sums from other persons, making in the whole 14*l.*; and he agreed to give one *Thomas Trotman*, with whom the pauper was placed as apprentice, a premium of 10*l.* and to pay him 4*l.* more to furnish her with clothes, and as a recompence for his having supported her some time before she was bound. Dr. *Lye* advanced the whole 14*l.* for those purposes in *September* 1825, and received no part of the subscription till 1826; and, upon the whole, was at an expense of 3*l.* more than the money collected by him. The monies contributed by the three parishes in *Hereford* were paid by the acting overseers, and allowed them in their accounts. The indenture of apprenticeship was not produced; but it was proved by the attorney who prepared it, and by his clerk who attested it, that on the 13th of *September* 1825, an indenture of apprenticeship was filled up, binding *C. Stephens*, the pauper, to *Trotman*, on a 1*l.* stamp, and was witnessed by the clerk, but they did not go before any magistrate. The premium of 10*l.* was paid, and the pauper served under the indenture nearly three years, residing in the appellant parish. It was admitted by the parties, that the 4*l.* remitted by Mr. *Wall* had been received by him from *Samuel Wright* of *Kingston*; and a magistrate residing near that place, stated that he believed *Samuel Wright* was overseer of *Kingston* in 1825, but he could not speak to a certainty, the parish having been under a select vestry. It was contended on behalf of the appellant parish, that the indenture was void for want of the consent of two magistrates, part of the premium having been paid out of the parochial funds; but the Court confirmed the order, considering that the indenture was not a binding by any overseer or overseers, but by Dr. *Lye*, who was not overseer of either of the parishes. The Court also considered that the payments by the several parishes were voluntary, and not made under any legal obligation, and, though they were charged to the parish accounts, yet no evidence being produced that the pauper belonged to either parish, there was no occasion to have the consent of magistrates under the 56 G. 3. c. 139. to the binding. The question for the opinion of the Court was, whether or not the indenture was valid without the consent of magistrates; if it was not so, the pauper was improperly removed to the parish of *St. Peter*.—Lord TENTERDEN C. J. This is a case not within the mischief intended to be remedied by the statute. The only question is, whether the enacting words of the eleventh section should not be construed with some restriction. That this binding is not within the general mischief intended to be remedied by the statute, appears manifestly from the preamble, which recites, “that many grievances have arisen from the binding of poor children as apprentices by parish officers to improper persons, and to persons residing at a distance.” This was not a binding by parish officers, but by an individual. The statute then directs, that “before any child be bound apprentice by the overseers of the poor of any parish, &c. such child shall be carried before two justices, who shall enquire into the propriety of binding such child,” &c. The first ten sections apply to cases where the parish officers are the binding parties: but inasmuch as parish officers, intending to bind a child apprentice to an improper person, or to a person not residing or carrying on business within a

reasonable distance, might, without being actual parties to the indenture, in order to evade the provisions contained in those sections, advance the public parochial funds to the parents of such child in order to bind him out; to remedy that mischief, and to prevent the parish officers from doing indirectly that which the other sections prevent them from doing directly, the eleventh section was introduced. That section recites, that "the salutary provisions enacted by the 43d of *Elizabeth* are frequently evaded in the binding out of poor children, and the premium of apprenticeship, or a part thereof, is clandestinely provided by parish officers, who are thus enabled to bind out such poor children without the sanction of justices of peace." The mischief, therefore, was, that parish officers, by advancing money without becoming ostensible parties to the indenture, were enabled to bind out poor children without the proper sanction: and to remedy that mischief, it is enacted, that "no indenture of apprenticeship, by reason of which any expense whatever shall be at any time incurred by the public parochial funds, shall be valid and effectual, unless approved of by two justices of the peace under their hands and seals, according to the provisions of the said act and of this act." The enacting words are certainly very large; but I think we ought to put on them such a construction as may have the effect of preventing the mischief intended to be remedied, yet of not extending them to a case like the present, where a humane and charitable person has bound out a poor apprentice, part of the sum expended in such binding having been voluntarily contributed by parish officers, and afterwards allowed them in their accounts by the parishes for which they act. I think we must construe the enacting part of this statute as applying to cases where the execution of the indenture is directly or indirectly obtained by parish officers, so as in effect to be a binding by them. Here the binding was not procured either directly or indirectly by the parish officers.—LITLEDALE J. The words of the enacting part of sect. 11. may perhaps be satisfied, if any part of the money expended in binding out the pauper be supplied from public parochial funds. Looking, however, to the object which the legislature had in view by that enactment, I think it does not apply to the present case. First, I think the words public parochial funds mean the funds of some one particular parish which may have an interest in the binding. Here the officers of three parishes contributed, and it does not appear that any one of those parishes was interested in binding out the pauper to another. But independently of this, that was not a binding either directly or indirectly by the parish officers. The great object of the legislature in sect. 11. was to prevent the parish officers from doing indirectly, that which they were prohibited from doing directly by the former sections; and that being so, I think the enacting words must be restrained to cases where they are, in substance and effect, though not in name, the binding parties, and where the binding takes place at their instance or instigation. The general preamble, as well as the preamble of the eleventh section, shews that the prohibition is intended only to meet those cases where the binding is either formally or substantially by the parish officers.—TAUNTON J. I think the order of sessions was right, on the ground stated in the case, that there was no binding by the parish officers, but only by Dr. Lye; and that the payment by the parishes was voluntary, and not made

in consequence of any legal obligation ; there being, too, no evidence that the pauper belonged to either of the parishes which contributed money, though it was charged and allowed in the respective parish accounts.—PATTESON J. concurred.—Order of sessions confirmed.

Of the Place of Residence.—2 Bott, pl. 538.

An apprentice to a barge-master, who had slept thirty-five nights in the master's parish during his service, went with his master on a voyage to London, where the master absconded, and never returned during the period of the indentures ; but the apprentice returned in the barge to the master's parish, and remained on board two days, when, in consequence of illness, he was, by direction of his master's wife, conveyed to the poor-house, she being unable to accommodate him in her own house, but was maintained entirely at her expense, in expectation of her husband's return, during three weeks, while he continued there : Held, that the apprentice acquired a settlement by such residence in the master's parish.

154. *Rex v. Foulness*, T. T. 57 G. 3.—6 M. & S. 351.—On appeal, the quarter sessions quashed an order for the removal of *Daniel Wade*, *Marianne* his wife, and their two children, from the parish of *Foulness* to the parish of *Little Wigborough*, both in the county of *Essex*, subject to the opinion of this Court on the following case :—The pauper, *Daniel Wade*, on the 1st of October 1806, was, by indenture, bound apprentice as a mariner for three years to *James Potter* of *Foulness*, who was master of a barge, of which he and *Wm. Potter* were joint owners, and which was navigated by *James Potter*. The pauper, and another apprentice, bound also to *James Potter*, served on board the barge, and made several voyages to London and back to *Foulness* between the 1st of October 1806 and the following Christmas. Previously to the last voyage, the pauper had slept thirty-five nights in *Foulness*. The master, *James Potter*, whilst in London on the last voyage, suddenly quitted the vessel, and was never seen by the pauper afterwards, nor did he come back to *Foulness*, nor was he heard of by his wife at any time during the remainder of the three years for which the pauper was bound. The pauper returned with his fellow-apprentice in the vessel to *Foulness*, and arrived about the 24th of December 1806. After his arrival he continued on board two days, when, in consequence of severe illness, he made application to Mrs. *Potter*, his master's wife, and was by her direction conveyed to the poor-house, because she was unable to afford him any accommodation in her own house. But she maintained him entirely at her own expense, in expectation of her husband's return during the three weeks he was continued in the poor-house, and only ceased to do so, on account of her own distressed situation, having nothing for him to do. He was afterwards supported by the parish. After the barge arrived at *Foulness*, *Potter*, the joint owner, as soon as he heard that *James Potter* had quitted the vessel, took the direction of the vessel, which remained more than a month at *Foulness*. The other apprentice bound to *James Potter* continued to serve on board the barge ; and the pauper would have done the same had he not been incapacitated by illness. The Court were of opinion that the pauper, after his return to *Foulness*, and whilst he was maintained by his master's wife, inhabited there under the indenture.—Lord ELLENBOROUGH C. J. I consider that the residence of the apprentice in the poor-house, was virtually a residence in the master's house, under a continuance of the contract. The wife maintains him there out of her pittance, until it fails, in expectation of her husband's return, and for the purpose of continuing the service until his return.—BAYLEY J. In *Rex v. Harberton*, (a) both parties consented to the dissolution of the contract. If the apprentice had sued the master, surely he could not have pleaded his own absence in bar to the action. In *Rex v. Barnby in the Marsh*, (b) the apprentice was residing at a distance from the master, and with his own friends : here he was maintained at the master's expence.

(a) 1 T. R. 140.

(b) 7 East. 381.

Why was he so maintained, except by reason that the master was under a legal obligation as master to maintain him in sickness? If the character of apprentice had ceased, the wife might have abandoned him, and sent him to his own parish.—*Per Curiam*.—Order confirmed.

155. *Rex v. Aldstone*, *E. T. 1 W. 4.*—2 *B. & Ad.* 207.—Upon an appeal against an order of two justices, whereby *Edward Davison* and his wife and children were removed from the township of *Hexham*, in *Northumberland*, to the parish of *Aldstone*, in *Cumberland*, the sessions confirmed the order, subject to the opinion of this Court on the following case:—The respondent parish of *Hexham* established a *prima facie* settlement of the pauper *Edward Davison* by parentage, in the parish of *Aldstone*. The appellants then proved, that the pauper *E. Davison*, when about nineteen years of age, bound himself as an apprentice to *John Ostle* of *North Shields*, in the county of *Northumberland*, ship-owner, by indenture bearing date the 26th of *August* 1809, for the term of three years; that in the first year of the pauper's apprenticeship the vessel in which he served was moored for a month in the township of *Middlesborough*, in the county of *York*, which town separately maintains its own poor; and that in the second year the same ship, in which the pauper still continued to serve, was moored in the said township of *Middlesborough* for five weeks, and that during the said month and five weeks he slept on board the ship. The question for the opinion of this Court was, whether the pauper *E. Davison* gained a settlement in *Middlesborough*, under the indenture of apprenticeship, the forty days of his residence in that township not having been in one and the same year of his apprenticeship.—Lord TENTERDEN C. J. This case falls within the decision in *Rex v. Gainsborough*. (a) There the pauper while apprentice, resided forty days in the whole in *West Stockwith*, at many different times during a term of three years and a quarter, and was resident no where else forty days during that period; and he was held to be settled in *West Stockwith*.—LITLEDALE J. There is a distinction between contracts for service and for apprenticeship. In the former case, there must be a year's service under a yearly hiring to confer a settlement; the forty days' residence must therefore be within the year. But the service under a contract of apprenticeship has no reference to the term of a year.—PARKE and PATTESON Js. concurred. — Order of sessions quashed.

156. *Rex v. Banbury*, *T. T. 2 W. 4.*—3 *B. & Ad.* 706.—On appeal against an order of two justices, whereby *George Stanton* and his wife were removed from the parish of *Banbury*, *Oxfordshire*, to the parish of *Kingsutton*, *Northamptonshire*, the sessions quashed the order, subject to the opinion of this Court on the following case:—The pauper, *George Stanton*, was, by indenture of apprenticeship, dated the 7th *April*, 1825, bound apprentice to *W. Kimbury* of *Banbury*, cork-cutter, for the term of seven years. The consideration money paid to the master was 21*l.*; and the master covenanted to teach the apprentice his trade, and find him sufficient meat, drink, clothing, lodging, washing, and all other necessities during the term. The pauper, upon the execution of the indenture, entered into the service of his master at *Banbury*, in which service he remained seven

An apprentice may gain a settlement by residing in a parish during his apprenticeship forty days, though not within the compass of any one year.

G. S. was bound apprentice to a cork-cutter in parish *B.*, to serve him for seven years. After serving for seven weeks in that parish, the apprentice having a weakness in his eyes, his master told him to go back to his father,

(a) 6 *T. R.* 452.

and it was afterwards agreed that the master should give the pauper two gross of corks per week, of the value of 2s., to maintain him; he went and lived with his father in parish K. for two years, during which time he received the corks from his master and sold them, and slept more than forty nights at his father's house in K., but did no work for his master. At the expiration of two years, in consequence of the master giving him bad corks, he was taken back to the master in B., with whom he lived ten days, and during that time he went out hawking corks for sale for his master. He then went home again, his master agreeing to let him have a gross of the best corks per week, which he did, and the apprentice disposed of them as before, doing no work for the master, and residing in K. with his father till his indentures were discharged by an order of two justices: Held, that the apprentice being maintained

by his master in K. in pursuance of the indenture, resided there as apprentice, and gained a settlement.

weeks, working at cutting corks; after which, the pauper having a weakness in his eyes, his master told him that he must go back to his father as he could not see to work at his trade. The pauper accordingly went home to his father's house at *Kingsutton*, on the *Saturday* following, where he staid till the next *Monday* morning. The pauper and his father then went again to the master, who refused to receive the pauper; upon which all the parties went before a magistrate, and the father made a complaint against the master, for refusing to receive the pauper. The magistrate informed the master, that he must return the premium or maintain the apprentice. The master stated that he could do that; and the pauper, his father, and the master, then went to the master's house, where it was agreed, that the master should give the pauper two gross of corks per week, to be of the value of 2s. per gross, to maintain him. The pauper then went home and lived with his father (who was a labourer and receiving parish relief), at *Kingsutton*, for two years, during which time the pauper received the corks from his master, according to the agreement between them. He sold the corks, and did any thing he could get to do, working for any one who would employ him. During those two years, the pauper did no work for his master, unless hawking the corks so furnished to him could be considered as a service under the indenture. The pauper did not account with his master for the corks so furnished to him, or their proceeds, and the pauper's father sometimes sold the corks. At the expiration of two years, in consequence of the master giving the pauper bad and valueless corks, the pauper was taken back by the father to his master, with whom he (the pauper) lived about ten days; and during that time he went out hawking corks for sale for his master. He slept on the night of the last of those ten days at the master's house in *Banbury*. At the end of the ten days the master told the pauper, that he must go home again on account of the badness of his sight; and he agreed to let the pauper have a gross of the best corks per week. Accordingly, the pauper went back to his father's at *Kingsutton*, and lived with him again till his indentures were discharged as herein-after stated; and, during such period, the master furnished the pauper with the corks according to the last-mentioned agreement, which corks the pauper sold, and received the proceeds; doing no work for his master, but getting employment as he could. The pauper, during his apprenticeship, slept more than forty nights at *Banbury*, and more than forty nights at *Kingsutton*; but he slept in his father's house at *Kingsutton* on the night of the 5th of *July*, 1829; and on the 6th of *July*, 1829, he was discharged from his apprenticeship by an order of two justices.—Lord TENTERDEN C. J. I am of opinion that the pauper gained a settlement in the parish of *Kingsutton*, under the circumstances stated in this case. It is not easy, and perhaps not possible, to reconcile all the cases on this subject. But this principle may be collected from them all, that where the residence in a parish different from that of the master is unconnected with the apprenticeship, no settlement is gained. The cases where paupers have removed to other parishes, on account of illness, or for the purpose of visiting friends, neither receiving maintenance nor performing service, are illustrations of this part of the rule. On the other hand, if

during the residence in a parish different from that of the master, the apprentice performs service for his master there, his residence is then considered referable to and connected with the apprenticeship, and he gains a settlement. There is also a third case, where the master assents to the residence of his apprentice in a different parish, and maintains him there, though no service be performed. The master covenants by the indenture to teach the pauper and also to maintain him. Here he certainly did not teach the apprentice while he resided in *Kingsutton*, but he did maintain him. That was one of the objects of the apprenticeship, and it was satisfied; and I think it is sufficient to connect the residence of the apprentice in *Kingsutton* with the indenture, and that the safer course will be to hold that such residence was referable to the apprenticeship, by reason of the maintenance of the pauper in that parish.—LITTLEDALE J. I am of the same opinion. The master here, in consequence of what passed before the justice, agreed to allow the pauper, while residing at his father's house, a quantity of corks per week to maintain him. The residence of the apprentice in his father's parish of *Kingsutton* is therefore accounted for by his master's maintaining him there according to that agreement. The cases upon this subject turn upon very refined distinctions; but I think here the residence in *Kingsutton* is referable to the apprenticeship, by reason of the maintenance.—PARKE J. I am of the same opinion. It may be collected from the decisions, that the residence in a parish different from that of the master must be connected with the indenture, or, as is laid down in *Rex v. Ilkeston* (a), in furtherance of the object of the apprenticeship. Now, that object is two-fold: maintenance and instruction. The one is as much the object of the indenture as the other. *Rex v. Charles* (b) and *Rex v. Linkinhorne* (c) shew that actual service in the parish where the apprentice resides is not necessary to give a settlement. If the pauper be permanently maintained by the master during the residence, one of the objects of the apprenticeship is attained, and it is immaterial in what parish the maintenance is afforded. The cases run very near to each other. *Rex v. Brotton* (d) is like this case in some respects, but there an express stipulation was made in the indenture by which the master dispensed with the services of the apprentice during the winter, the time of the residence upon which the question of settlement arose.—TAUNTON J. In the cases which have been referred to, and in which the residence was held not to have taken place under the apprenticeship, the pauper was not under the controul of the master, and there was no other circumstance from which it could be said that the residence was in pursuance of the contract. But here the relation of master and apprentice clearly continued until the indenture was discharged. The agreement of the master to allow the apprentice corks, by the sale of which he was to maintain himself in *Kingsutton*, shews that the residence there was in pursuance of the contract of apprenticeship, and therefore without breaking in upon any decided case. I think we may hold here that the settlement was in *Kingsutton*.—The order of sessions must be quashed.

(a) 4 B. & C. 64.
(c) Ante, 413.

(b) Burr. S. C. 706
(d) 4 B. & A. 84.

Of binding to one Master and Service with another.—2 Bott, pl. 584.

Where pauper, a parish apprentice, bound till twenty-one, served about eight years, when it was agreed that he should go to C., who was of the same trade with his master, to serve him the remainder of his term, and C. agreed to pay his master 1s. 6d. per week during that period and pauper accordingly went to C., at first for a few days on trial, and continued serving him with his master's express consent, and after he had been there three weeks, the original indenture was given up by his master to C., and a new indenture of apprenticeship made between the pauper, his father-in-law, his master, and C., without reference to the original indenture, and for a longer period than the remainder of the original term, and containing some provisions differing from those in the original indenture: Held, that pauper did not gain a settlement by serving C. as upon a constructive service

157. *Rex v. Ecclesfield*, E. T. 57 G. 3.—6 M. & S. 173.—On appeal, an order for the removal of *Joseph Wostenholm*, *Sarah*, his wife, and one child, from the township of *Brightside Bierlow*, to the township of *Ecclesfield*, both in the West Riding of the county of *York*, was confirmed at the sessions, subject to the opinion of this Court on the following case:—The pauper, when about nine years of age, was bound by a parish indenture, dated 24th May 1803, as an apprentice to *Samuel Carr*, of *Ecclesfield*, till he should attain the age of twenty-one years. He served *Carr* under that indenture for about eight years, when, in consequence of some disagreement between them, it was agreed that he should go to *Peter Cadman*, of *Sheffield*, scissor-maker, to serve him during the remainder of the original term. *Cadman* agreed to pay *Carr* 1s. 6d. per week during that period. The pauper accordingly went to *Cadman*, at first for a few days upon trial, and continued serving him, with *Carr*'s express approbation and consent. After he had been there three weeks, the original indenture was given up by *Carr* to *Cadman*, and an indenture, of which the following is the substance, was executed by the parties:—This indenture, made the 30th day of November 1810, between *Joseph Wostenholm*, son of *Benjamin Wostenholm*, deceased, *Charles Denton*, the said *Joseph Wostenholm*'s father in law, and *Samuel Carr*, maker of scissors, of the one part; and *Peter Cadman*, of the other part; witnesseth that the said *Wostenholm*, of his own good liking, and by and with the consent of his friends, hath put and bound himself apprentice to and with the said *Cadman*, in the trade of a maker of scissors to be taught and instructed, and with him as an apprentice to dwell, serve, and abide, from the day of the date hereof for seven years thence next ensuing, during which time the said *Wostenholm*, the apprentice, shall and will take him, the said *Cadman*, for his master (and so proceeded in the usual form of indentures of apprenticeship). And the said master doth for himself, his executors, and administrators, covenant and agree to and with the said apprentice, that he, the said master, shall and will teach and instruct the said apprentice, according to the best of his, the said master's, skill in the said trade, within the limits of the corporation of cutlers in *Hallamshire*; and also that he will provide for the said apprentice good, wholesome, and sufficient meat, drink, &c.; and also that he will pay him for wages sixteen pence yearly during the said term. And the said master doth hereby further agree to pay the said apprentice the sum of two shillings weekly during the last year and a half of the said term. (Signed and sealed by all the parties). No premium was paid to *Cadman*, but he continued to pay *Carr* the 1s. 6d. per week under the agreement, and the pauper continued to serve *Cadman* during the greater part of the remainder of the original term. The sessions being of opinion that the pauper had not gained a settlement at *Sheffield* by this service with *Cadman*, confirmed the order.—Lord ELLENBOROUGH C. J. The second indenture is not to be rejected as an entire nullity; although it be not capable of the legal effect for which it was intended, that is, to constitute an apprenticeship, it may serve to indicate an intention that the service should not be continued under the original indenture, but

should begin *de novo*. I think this case is concluded by *Rex v. Christowe*, (a) which was decided on a review of all the cases.—BAYLEY J. In my opinion, this case cannot be fairly distinguished from *Rex v. Christowe*. In that case it was settled, that unless there be a consent to the second service under a recognition of the original binding, a settlement is not acquired, and that an instrument purporting to be a new binding is not such a consent. Is it possible in this case to say, that the second service was a service with a consent of the nature above stated, when the time and manner of service are different from those under the original binding? The second master had not the same rights with respect to service as the first master, neither had the apprentice the same rights with respect to his employment. In truth, the second indenture was made with another view, and shews that it was never intended that the service should be continued under the first, on the same terms, or *ejusdem generis*.—ABBOTT J. To hold that service under the second contract was a service under the first, would, as it seems to me, be not only to draw a legal conclusion without premises, but contrary to the facts. When the parties executed the new indenture stipulating for service for another period, it is impossible, I think, to say that this was not a new service under the new indenture and not under the first. *Rex v. Christowe* appears to me to govern this case, unless the circumstance alluded to by Mr. Scarlett makes a difference. But I think that circumstance does not, for I consider the parol agreement as entirely done away with by the subsequent instrument.—HOLROYD J. I am entirely of the same opinion. It seems to me that the second service, being inconsistent with and in a different character from the first, must be considered as a service referable to the engagement with the second master, and not with the first.—Order of sessions confirmed.

158. *Rex v. Shipton*, E. T. 9 G. 4.—8 B. & C. 88.—Upon an appeal against an order of two magistrates, dated the 14th of May 1827, whereby *William Partridge* and his wife were removed from the parish of *Dudley*, in the county of *Worcester*, to the parish of *Shipton*, in the county of *Salop*; the sessions confirmed the order, subject to the opinion of this Court on the following case:—The pauper, *W. Partridge*, at the age of thirteen years, was under indentures, bearing date the 3d of *September* 1816, put out an apprentice for seven years, by the officers of the parish of *Stanton Long*, in the county of *Salop*, with the consent of two magistrates in the usual manner, to *John Taylor*, who occupied a farm in that parish. After the pauper had been some months at his master's farm, *Taylor* not having sufficient work for him, asked him if he would go over to a farm called the *Moorhouse*, in the parish of *Shipton*, to drive the plough. The pauper said he had no objection, and immediately packed up his clothes and went accordingly. The *Moorhouse* was in the occupation of a Mrs. *Corser*, the sister of *Taylor*, whose husband was a lunatic, and incapable of superintending the management of his farm. *Taylor* accordingly, about once a fortnight, went over from his residence at *Stanton Long* to the *Moorhouse*, a distance of a mile, and gave his advice and opinion to his sister respecting the proper management of her farming affairs. He also gave orders to her servants, but never gave any orders to the pauper after he had been sent to the *Moorhouse* as before-mentioned. *Taylor* never told

under the first indenture with his master's consent, although C. continued to pay his master the 1s. 6d. per week under the agreement.

The master of a parish apprentice not having work sufficient for him, proposed to him to go to a farm in a different parish, occupied by the master's sister. The pauper assented to the proposal, and agreed with her to work there for a twelve-month for his meat and drink. He worked for her for four years and four months. During the first two years he received from her meat and drink. During the third and fourth he re-

ceived wages : Held, first, that no settlement was gained by the service with the sister, the service not being under the indentures : Held, secondly, that there had been a putting away of the apprentice without the consent of the justices, within the meaning of the statute 56 G. 3. c. 139. s. 9. and that the pauper did not by his service with the sister gain any settlement by hiring and service.

the pauper *William* that he might hire himself, or make any engagement with Mrs. *Corser*, but retained possession of the indenture of apprenticeship, and produced it in Court on the trial of the appeal. No agreement or bargain was ever made between *Taylor* and his sister, respecting the services of the pauper. On the arrival of the pauper at the *Moorhouse*, Mrs. *Corser* asked him if he would stay and drive the plough for his meat and drink for a twelvemonth? he replied that he would, and she sent him to the field to drive the plough. For his services at the *Moorhouse* for the first and second years, the pauper was not paid any money, but was found in clothing (except a pair of shoes and some stockings) and in meat and drink by Mrs. *Corser*. At the end of the second year he hired himself for a year to Mrs. *Corser* for 5*l.* and served that year, and received the full amount of his wages. When that period had expired, he hired himself again for a year at 6*l.* and received that sum at the completion of the year. During the time that the pauper was in the service of Mrs. *Corser*, which was four years and four months, he never received any orders from *Taylor*, nor did he ever return to *Taylor's* farm after he first quitted it, as before stated. No assignment of the indenture was made, nor was the consent of any magistrate obtained for placing the pauper *William* with Mrs. *Corser*. When he had been for two years at Mrs. *Corser's*, *Taylor* became insolvent and quitted his farm, after which he ceased to have any thing to do with the *Moorhouse*, and saw no more of the pauper. Before *Taylor's* insolvency, and whilst the pauper worked at the *Moorhouse*, *Taylor*, on the application of the pauper's mother, furnished him with some shoes, and on another occasion supplied him with wool to make stockings for him; he also employed a surgeon to attend him whilst labouring under a complaint, and paid his bill. When the pauper left the *Moorhouse*, the term of his apprenticeship had not expired. The question for the consideration of the Court was, Whether this apprentice had not been put away and dismissed from the service of his master, within the meaning of section 9. of 56 G. 3. c. 139. which came into operation on the 1st of *October* 1816, so that he could not obtain a settlement in *Shipton* by means of his service there? or whether the service in *Shipton* was by law a service under the indenture of apprenticeship, so as to confer a settlement in that parish?—Lord TENTERDEN C. J. Upon both grounds I think that the justices were wrong in the conclusion to which they came in this case. First, independently of the provisions of the 56 G. 3. c. 139., I think that no settlement was gained in this case. In order to gain a settlement by apprenticeship, there must be a continued service under the indenture. If, during the term of the apprenticeship, the apprentice hires himself to a stranger to the indenture, the service is not referable to the indenture, but to the contract of hiring, and, consequently, no settlement is gained by apprenticeship. Here it appears from the facts stated in the case that the pauper hired himself to Mrs. *Corser*. He might, therefore, have gained a settlement by hiring and service if he had not been an apprentice. The service was not under the indenture, but under the contract of hiring. I also think that no settlement was gained, because there was, in this case, a putting away of the apprentice within the meaning of the 56 G. 3. c. 139. s. 9. The 32 G. 3. c. 57. s. 7. recites, that it frequently happened that persons were compellable under the act of the 9 & 10 W. 3. to take a greater

number of parish apprentices than it was convenient for them to maintain and employ in their own families, and they were, therefore, forced to *place out* or assign over such apprentices to other persons, and that it was proper that such assignment should be legally made under the inspection and controul of the magistrates, as well for the benefit of the apprentice as that the original master might be discharged from his covenants in respect of such apprentice; and that it was fit that the person to whom such assignment should be made, and also the apprentice, should be subject to the ordinary jurisdiction of justices of the peace with respect to masters and parish apprentices; and it then enacts, "that it shall be lawful for the master of any such parish apprentice, by indorsement on the indenture, &c. with the consent of two justices, to assign such apprentice to any person willing to take such apprentice for the residue of the term mentioned in such indenture." Notwithstanding this statute, it was discovered that many grievances had arisen from the binding of poor children as apprentices by parish officers to improper persons, whereby the parish officers and the parents of such children were deprived of the opportunity of knowing the manner in which such children were treated; and also from the permission given to apprentices by the persons to whom such apprentices had been bound, to serve others without a formal assignment, whereby the discretion required by the statute to be exercised by magistrates in placing out apprentices to suitable persons was frequently rendered of no avail. Those mischiefs are provided for by the statute 56 G. 3. c. 139. s. 9., which recites "that it was expedient that those to whom parish apprentices were bound or assigned should be empowered to *place out* or assign over such apprentice to others, and that it was proper that such *placing out* or assignment should in all instances be under the inspection and controul of the magistrates, and that it was fit that the person to whom such putting out or assignment should be made, and the apprentice, should be subject to the ordinary jurisdiction of justices, of the peace, and that it was inexpedient that any master or mistress should in any way discharge or dismiss from his or her service any parish apprentice without the consent of such justices;" and it then enacts, "that it shall not be lawful for any master to put away or transfer any parish apprentice to any other, or in any way to discharge or dismiss from his or her service any parish apprentice without such consent of justices as was directed by the 32 G. 3. c. 57. and that no settlement shall be gained by any service of such apprentice after such putting away or transfer, unless such service shall have been performed under the sanction of such consent as aforesaid." Here *Taylor*, the first master, not having sufficient work for the apprentice, proposed to him to go and work at a farm in the occupation of Mrs. *Corser*, where he worked for her for four years and four months, with the assent of *Taylor*. I think that was a putting away of the apprentice, without the consent of the justices within the words of the ninth section of this statute, and, consequently that no settlement was gained after the putting away of the pauper to Mrs. *Corser*. The order of sessions must, therefore, be quashed.—*BAYLEY J. Rex v. Whitchurch (a)* is expressly in point to shew that no settlement was gained by apprenticeship in this case, on the ground

(a) 1 B. & C. 574.

that the service in *Shipton* was not referable to the indenture, but to the contract of hiring. I think also, that the pauper gained no settlement in *Shipton*, because there was a putting away of the apprenticeship within the meaning of the 56 G. 3. c. 139. s. 9. The object of the legislature was to protect parish apprentices, who are unable to protect themselves, and to place them under the protection of the magistrates. We ought, therefore to adopt such a construction as will best effectuate the intention of the legislature. The 32 G. 3. c. 57. s. 7. prohibited masters from assigning parish apprentices without the consent of the justices. In the recital of that section, the words, "place out or assign" occur, but, in the enacting part, the assignment alone is prohibited. But the 56 G. 3. c. 139. s. 9. recites, "that it is expedient that the placing out or assignment of parish apprentices should, in all instances, be under the inspection and controul of the magistrates," and enacts, "that it shall not be lawful for any justices to put away or transfer any parish apprentice without such consent, and that no settlement shall be gained by any service of such apprentice, after such putting away or transfer, unless such service shall be performed under the sanction of such consent as aforesaid." An assignment imports a transfer of the services of the apprentice for the residue of his term. But an apprentice may be said to be placed out when the master consents to the apprentice serving another individual, so as to become subject to the controul of that other. Here it is evident that the legislature intended to prohibit the placing out, without consent of the justices, as well as the assignment. I think that in this case the master placed out the apprentice to Mrs. Corser, or put him away, and, consequently, that the service, after such putting away without consent, gave no settlement.—Order of sessions quashed.

159. *Rex v. Linkinhorne, E. T. 2 W. 4.—3 B. & Ad. 413.*—On appeal against an order of two justices, whereby William Wallis and his family were removed from the parish of Linkinhorne, in Cornwall, to the parish of St. Cleer in the same county, the sessions quashed the order, subject to the opinion of this Court on the following case:—The pauper was duly bound apprentice by the churchwardens and overseers of the parish of St. Cleer, to John Gadgcombe of that parish, farmer; and served him in St. Cleer under the indenture for about six years, when Gadgcombe, having failed in business, agreed to place the pauper with T. Little, of the parish of St. Pinnock in the said county, farmer. No assignment or transfer of the indenture was made; but the pauper, in March 1816, went to and served Little in St. Pinnock with the consent of Gadgcombe, for nine months. The pauper then becoming ill and disabled for service, went back to Gadgcombe in the parish of St. Cleer, and he, having no accommodation for the pauper, told him to go to his mother who lived in St. Cleer, promising to come and agree with her for his board and maintenance. The pauper went to his mother accordingly, and, a few days after, Gadgcombe came and promised the mother to remunerate her for taking care of her son, and took the pauper to a medical man for advice. The pauper continued to reside with his mother in St. Cleer for about eight weeks, Gadgcombe also, during that time, being resident in St. Cleer, but the pauper did not perform any actual service for Gadgcombe during that period. The sessions were of opinion, that, for want of such service, the last legal place of

A pauper was duly apprenticed to a farmer residing in parish A., and served him there, but before the expiration of the apprenticeship, the farmer, having failed in business, placed the pauper with another farmer in parish B., and the pauper served the latter in B. for nine months, when becoming ill and disabled from service, he returned to his first master in parish A. The latter, having no accommodation for him, told

settlement of the pauper was in *St. Pinnock*.—Lord TENTERDEN C. J. The decisions on this branch of the law run very near to each other, and are hardly reconcilable. I agree that the mere continuance of the contract during the absence of the apprentice from his master is not sufficient, but I do not agree that the performance of some service by the apprentice is absolutely necessary to enable him to gain a settlement in a parish different from that where the master lives; I think less than that will do, and that it will be sufficient, if the residence be in pursuance of the contract of apprenticeship, and in a place where, but for that contract, it would not have been. The word service is not mentioned in the statute 3 W. & M. c. 11. s. 8., but *binding and inhabitation*. Here, I think, it is evident that the boy's residence with his mother in *St. Cleer* was in pursuance of the contract of apprenticeship; for, during all that time, the master was bound to maintain him, and did so in performance of his part of the contract. The pauper was therefore settled in *St. Cleer*.—LITTLEDALE J. Although no actual service was rendered by the pauper while he resided in *St. Cleer* the last eight weeks, such residence was in pursuance of the contract of apprenticeship. He returned to his master with the intention to reside with him, and to perform service as soon as his health permitted. Illness alone prevented it. He went to his mother's house by desire of his master. His residence there is to be considered as if he had continued in the master's house; and if he had been taken ill while residing there, there could have been no doubt that he would have gained a settlement in *St. Cleer*, although he performed no service. That the master considered him as residing with his mother in pursuance of the contract of apprenticeship, is shewn by the fact of his having agreed to maintain him during that time.—PARKE J. I am also of opinion that a settlement was gained in the parish of *St. Cleer*. The question arises on the statute 3 W. & M. c. 11. s. 8., which enacts, that "if any person shall be bound an apprentice by indenture, and inhabit in any parish, such binding and inhabitation shall be adjudged a good settlement." The statute says nothing of actual service. The true construction, as stated by Lord Tenterden, in *Rex v. Ilkeston (a)*, is, that the *inhabitation* must be in the character of an apprentice, and in some way or other in furtherance of the object of the apprenticeship. Now, applying that rule to the present case, the pauper's residence in *St. Cleer* was not casual, for he came to that parish because the master was bound to receive and maintain him. The residence there, consequently, was connected with the apprenticeship. The dictum, that service is one of the *essential* requisites to confer a settlement cannot be supported. Service may be material, as shewing that the residence is in the character of apprentice, but that may be shown by other facts. Here the residence appears undoubtedly to have been in the character of apprentice, and was so considered by the master, for he agreed to maintain the pauper during the time of such residence.—PATTESON J. Service is a criterion, but not the only one whereby to determine the character of the residence, and the facts stated in this case abundantly shew that the pauper resided in *St. Cleer* as an apprentice. *Rex v. Charles (b)*, is in point, and has not been overruled. The order of sessions must be quashed.—Order of sessions quashed.

him to go to his mother, who lived in that parish. The pauper did so, and his first master, a few days after, promised his mother to remunerate her for taking care of the pauper. The pauper continued to reside with his mother in *A.* for about eight weeks, his first master also being resident there, but did not perform any actual service for him: Held, that the pauper resided in *A.* in the character of apprentice, and thereby gained a settlement in that parish.

(a) 4 B. & C. 67.

(b) Burr. S. C. 706.

Of Apprenticeship under Certificate.—2 Bott, pl. 597.

A person residing in *N.* under a certificate from *R.* was bound apprentice to a master residing in *N.* and served his time, and during the greater part of his service and on the last night of it slept in *N.*, but in the course of his service was in the habit of navigating a river and was detained occasionally for two or three days together, and slept at an inn or on board the barge in a third parish, and slept there considerably more than 40 nights during his apprenticeship, but he could not say for 40 nights in any one year: Held, that his settlement was in *R.*

160. *Rex v. Rustington*, T. T. 57 G. 3.—6 M. & S. 396.—Upon appeal, the quarter sessions for the county of *Sussex* confirmed an order for the removal of *Joseph Mitchener*, his wife, and child, from the parish of *Newhaven* to the parish of *Rustington*, subject to the opinion of this Court upon the following case:—The pauper was included by name in a certificate given in the year 1763, by the parish of *Rustington* to the parish of *Newhaven*, while residing under this certificate; he was bound apprentice to one *Brown*, a lighterman, in *Newhaven*, for seven years, and served under the indentures for the whole period of his apprenticeship. During the greater part of his apprenticeship, and on the last night of it, the pauper slept in *Newhaven*, and in his master's house; but in the course of his employment under his master, he was in the habit of going up and down the river *Ouse* to and from *Lewes*, in his master's barges. Upon these occasions he was frequently detained by circumstances at *Lewes* for two or three days together, but not longer at any one time; and when so detained, he slept either at an inn in the parish of *St. Thomas à Becket* in the Cliffe near *Lewes*, or on board his master's barge, while it lay in a part of the river which is in the same parish. He slept in the parish of *St. Thomas à Becket* in the Cliffe, considerably more than forty nights in the whole seven years, but he could not take upon himself to say that he slept there forty nights in any one year of the term.—Lord ELLENBOROUGH C. J. Had it not been for the certificate the settlement would have been at *Newhaven*, because that is the parish where the apprentice slept the last night of his service. The certificate prevents this, but why is that to place a third parish in a worse situation? There was nothing like a permanent residence in *St. Thomas à Becket*, to constitute an abandonment of the certificate.—BAYLEY J. The law on this branch of settlement is, that an apprentice is settled in the parish where he sleeps the last night of his apprenticeship, if he has slept there altogether during the year for forty nights. According to that law, the pauper would have been settled in *Newhaven*, were it not for the certificate. How then is the certificate, which is in the nature of a private bargain between two parishes to vary the case as it regards a third parish, and in the present instance to throw a charge on *St. Thomas à Becket*, which otherwise they would not have to bear? In *Rex v. Great Torrington*, (a) the certificate was completely discharged by settlement gained in another parish by apprenticeship; but when was this certificate discharged?—ABBOTT J. The decision in *Rex v. Spotland*, (b) certainly gives colour to the argument of to day, which would maintain that a settlement was acquired in the parish of *St. Thomas à Becket*, for the two cases are in circumstances very similar. The facts of that case were these; the pauper was bound apprentice to a certificated man from *Middleton* to *Castleton*, and served his master in *Castleton* for some years, and then removed with him to *Spotland*, where he served forty days, and then married; from which time till the expiration of his apprenticeship, which was more than half-a-year, he worked with his master in *Spotland*, but lodged with his wife in *Castleton*. And the Court held, that although the certificate still subsisted, yet that he had gained a settle-

(a) *Burr. S. C.* 428.(b) *Burr. S. C.* 527.

ment in *Spotland*, for that the 12 *Ann*, c. 8. s. 2. only says, that an apprentice shall not gain a settlement in the parish to which his master was certificated, but I cannot help thinking that the Court were under some misapprehension of the terms of the statute; for it also says, "that the apprentice shall have his settlement in such parish, as if he had not been bound apprentice to such certificated person."—*HOLROYD J.* The argument against the order of sessions would place a third parish in a worse situation than if the certificate had not existed.—Order confirmed.

Of Evidence of Apprenticeship.—2 Bott, pl. 607.

161. *Rex v. Denio*, *M. T.* 8 *G.* 4.—7 *B. & C.* 620.—Upon appeal against an order of two justices, whereby *William Roberts*, his wife and children, were removed from the parish of *Rhodogeidio*, in the county of *Carnarvon*, to the parish of *Denio*, in the same county, the sessions confirmed the order, subject to the opinion of this Court on the following case:—The pauper being a poor boy belonging to the parish of *Llambelig* was bound by the overseers of the poor of that parish as apprentice to one *J. Connell*, a hatter, residing at *Pwllhely*, in the parish of *Denio*, about twenty-three years ago, by an indenture for seven years; on which the pauper said he believed there was a stamp, and that it was signed and sealed; and there were no justices present at the time of the signing and sealing of the indenture, nor did the pauper recollect being at any other time before any justice respecting it; and there was no evidence that the assent of two justices had been given, or that the parish officers were parties to the indenture. The pauper also said, that the indenture was then kept by *Connell*, the master, and that he the pauper never saw it afterwards; that he served in *Denio*, under the indenture of apprenticeship for the whole term of seven years; that when the apprenticeship expired, he asked his master, *Connell*, (who was then a rated inhabitant of the parish of *Denio*, but did not reside or pay taxes there when the appeal was tried), for the indenture, who said that he had not got it, but that it was with the overseers of *Llambelig*. No other witnesses were called, nor any further evidence given respecting it, except that the present parish officers of *Llambelig* proved at the trial that they had searched among the papers belonging to that parish for the indenture, and that it could not be found; and that all the parish books and papers about that date were missing. The order of removal was confirmed, subject to the opinion of this Court as to whether the declarations of *Connell* were properly received in evidence; and whether, according to the foregoing facts, the loss of the indenture was sufficiently proved or accounted for to let in parol evidence of its contents.—*BAYLEY J.* The decision in *Rex v. Morton (a)* did not proceed on the ground that the declaration of the executrix of the master was admissible; but that if the declaration of the pauper were admissible so as to shew a possession of the indentures by him, it shewed also that further search or enquiry was unnecessary, because he stated that it had been given up to him, and that he had burnt it. In this case *Connell*, the master, was living, and might have been called as a witness to prove either that he had delivered his copy of the indenture to the parish officers or had destroyed it, or that there were originally two parts, and the parish

It was proved by a pauper, that he had been bound apprentice twenty-three years ago to *A. B.*; that indentures were signed and sealed, and that he served seven years, and that *A. B.* had the indentures; that when the apprenticeship expired, the pauper asked *A. B.* for the indentures, and he said the parish officers had them: Held, that the declarations of *A. B.*, who might have been called as a witness, were not admissible in evidence, and that parol evidence of the contents was not admissible.

(a) 4 *M. & S.* 48.

officers had one. His declarations clearly were not admissible in evidence. There was not sufficient evidence to shew that a bonâ fide and diligent search was made for the instrument where it was likely to be found, so as to let in parol evidence of the contents. In *Rex v. Castleton (a)*, there were two parts of an indenture of apprenticeship, one of which was proved to have been destroyed, and the other had been delivered to Miss *Taylor of Bomford*, to whom the apprentice had been assigned. Evidence was given that application had been made to Miss *Taylor*, who had ceased to reside at *Bomford*, for the part delivered to her, and that she had said that she could not find it, and did not know where it was; but Miss *Taylor*, though still living, was not called as a witness. The Court held that the part so delivered had not been sufficiently accounted for; it had been traced into the hands of Miss *Taylor*, but no further evidence had been given to shew what had become of it. That case is precisely in point. The order of sessions must therefore be quashed.—Order of sessions quashed.

The mother of the pauper stated that about twenty-four years ago she received money from the parish officers of *S.* to put her son out apprentice, and that she accordingly put him out; that the indenture was signed by her, the pauper, the master, and by a witness; that she gave it to the wife of a market-gardener who attended the market of *S.* to take to the overseers of the parish of *S.*, that the market-gardener and his wife were both dead the latter having survived her husband, that she did not know whether the market-gardener's wife had left any will but had heard that she had. Evidence was then given

162. *Rex v. Stourbridge, E. T. 9 G. 4.—8 B. & C. 96.*—Upon an appeal against an order of two justices, bearing date the 27th day of April 1827, whereby *G. Layton*, his wife and four children, were removed from the parish of *Bromsgrove*, in the county of *Worcester*, to the township of *Stourbridge*, in the same county, the sessions confirmed the order, subject to the opinion of this Court on the following case:—The respondent parish established a derivative settlement of the pauper in the appellant township by relief given to his mother. The mother of the pauper being examined on the part of the appellants, stated that about twenty-four years ago, she received some money from the overseers of *Stourbridge* to put her son out apprentice, and that she accordingly put the pauper, at the age of seven years, apprentice to one *Clay*, of the parish of *Bromsgrove*, who was her brother-in-law, that the indenture was signed by her, by the pauper, *G. Layton*, by the master, and by the man who had filed it up, that she gave the indenture to *Nanny Badger* to take to *Stourbridge* to the overseers who had given her the money to pay for the stamp for it; that it was directed to the overseers of *Stourbridge*; that *Nanny Badger's* husband was a market gardener, and used to attend *Stourbridge* market; that sometimes he, and sometimes his wife went to market, and the indenture was to be carried by either the husband or the wife when they went to market; that both *Nanny Badger* and her husband were since dead, but that she had survived her husband, that she did not know whether *Nanny Badger* had left any will, but had heard that she had. The appellants further proved by *John Moseley*, an overseer of *Stourbridge*, that he had searched diligently in the chest where the papers of the township are kept for the indenture of apprenticeship, but had not been able to find it, and that he had applied to the executor of *W. Badger*, the husband of *Nanny Badger*, who had informed him that the indenture had never come to his hands, and he was certain that no such paper was in *W. Badger's* possession when he died. Under these circumstances the appellants proposed to give secondary evidence of the due execution and contents of the indenture. But this evidence was objected to on the part of the respondents and disal-

lowed by the Court of quarter sessions on the ground that sufficient evidence had not been given of the loss of the indenture. The question for the opinion of this Court was, Whether under the circumstances stated, secondary evidence ought to have been admitted of the execution and contents of the indenture?—Lord TENTERDEN C. J. I think that under the circumstances of the case there was reasonable evidence of the loss or destruction of the indenture, and that the secondary evidence ought to have been received. If it had been handed over to the overseers it would have been placed in the parish chest, for it was their duty to place it there. Not having been found there the natural presumption is that it is lost.—BAYLEY J. If the indenture ever found its way into the parish chest which was the proper place of custody, if it had been delivered to the parish officers it would have been there. Not being there, the presumption is, that it is lost or destroyed.—Order of sessions quashed.

that search had been made in the parish chest of *St.* for the indenture and that it could not be found: Held, that as it was the duty of the overseers if the indenture had come into their possession to deposit it in the parish chest, the presumption was that it was lost or destroyed, and therefore was admissible.

fore that secondary evidence of the execution and contents of the indenture

163. *Rex v. Enderby, E. T. 1 W. 4.—2 B. & Ad. 205.*—Upon an appeal against an order of two justices, whereby *Joseph Blockley*, his wife, and two children, were removed from *Heather* in the county of *Leicester*, to *Enderby* in the same county, the sessions confirmed the order of removal, subject to the opinion of this Court on the following case:—By parish indentures duly allowed, the pauper was bound on the 18th of *July* 1812 to one *Thomas Dalby* of the parish of *St. Mary's, Leicester*, framework-knitter, and afterwards, according to the provisions of the act 32 *G. 3. c. 57.*, was assigned on the 6th of *April* 1813 to one *Samuel Briggs* of the parish of *Enderby*, framework-knitter. The pauper served *Briggs* in *Enderby* until the 6th of *February* 1815; after which the appellants proposed to shew that, by the assent of *Briggs*, the pauper served more than forty days as an apprentice in the parish of *Heather*, with his father *Samuel Blockley*, framework knitter; but it appeared that the father had signed, and delivered to *Briggs*, a memorandum, which was unstamped, and was as follows:—"Agreed, *Feb. 6th, 1815.* This is to certify, That *Samuel Blockley* has agreed to give *Samuel Briggs*, master of *Joseph Blockley*, his son, the sum of 8*s.* for the time of his apprenticeship." The sessions refused to receive any parol evidence of the assent of *Briggs* to the service with the pauper's father, on the ground that there was a written agreement; and they refused to receive the written paper because it was unstamped.—Lord TENTERDEN C. J. In *Rex v. St. Paul's, Bedford*, (*a*) the instrument professed to be an assignment of an apprentice, and not, as was there contended, an agreement for the hire of a servant; and on that ground it was held not to be exempted from stamp duty. Here the instrument is different, and there is nothing to shew that the value of the subject matter of the agreement was 20*l.* it does not, therefore, fall within the terms of the schedule. rendering a stamp necessary where such is the value. The case must go back to the sessions, in order that the evidence may be received.

On appeal against an order of removal, the appellants, to shew that the pauper served more than forty days as an apprentice in the respondent parish, with the assent of his master, produced a written paper, purporting to certify that the father of the pauper agreed to give his master eight shillings for the term of his apprenticeship: Held, that, there being nothing to shew that the value of the subject-matter of the agreement was 20*l.* it did not require a stamp.

164. *Rex v. Piddlehinton, E. T. 2 W. 4. — 3 B. & Ad. 460.*—On appeal against an order for the removal of *John Northover* from the parish of *Piddlehinton*, in the county of *Dorset*, to the parish of

The master of an apprentice, having had the indenture in his

possession, failed in business, and an attorney took the management of his affairs, and custody of his papers, which he inspected, but did not find the indenture: Held, that this, after the master's death, was a sufficient case to let in secondary evidence of the indenture, though his widow was living, and no enquiry had been made of her respecting it.

A father, in consideration of natural affection, and of 24*l.* which he owed his son, made over to him premises in the parish of *S.*, by verbal agreement only, and the son received the rents for three years, residing in *S.*: Held, that the son was a purchaser for less than 30*l.* within 9 *G. 1. c. 7. s. 5.* and gained no settlement

Charminster in the same county; the sessions quashed the order, subject to the opinion of this Court on the following case:—The respondents proved that the pauper, thirty years ago, was apprenticed to *John Fowle of Charminster*, by a deed of only one part, which, on being executed, was carried away by *Fowle*. The pauper served as apprentice to *Fowle*, in *Charminster*, about a year, when *Fowle* failed in business, gave up his premises, and passed the remaining years of his life in a lodging at *Charminster*, with his wife, supported by their friends. Upon the failure of *Fowle*, *Mr. Sabine*, an attorney of *Dorchester*, had the management of his affairs, and the custody of all his books and papers. He looked over the books and papers relating to *Fowle's* accounts shortly after his failure, and did not find any indenture. *Fowle* left no child. His widow quitted the neighbourhood of *Charminster* about 1821. A witness had called upon and seen her in *London* about a year before the trial of the appeal: and did not know that she was not still resident there. It was objected that this proof was not sufficient to let in secondary evidence of the indenture; but the sessions were of a different opinion, and parol testimony was then given that the pauper was duly bound apprentice to *Fowle*. The appellants then gave the following evidence to shew a subsequent settlement in *Stratton*. On the 13th of *October* 1813, *J. Brown* and his wife, in consideration of 40*l.*, demised to *William Northover*, the pauper's father, a cottage in the parish of *Stratton, Dorsetshire*, for sixty years. The pauper, by a verbal agreement with his father, who owed him 24*l.*, was put into the possession of and received the rents of the cottage for three years, 3*l.* for the first year, and 5*l.* for the two next years; at the end of which term, by indenture dated the 4th of *November* 1816, between the said *William Northover* of the first part, the pauper of the second part, and one *Thomas Bowring* of the third part, reciting the deed of *October* 1813; and that the father, since the delivery and execution thereof, had, in consideration of his natural love and affection to his son (the pauper), and also in liquidation of a certain debt due to him, verbally, and without any assignment or conveyance, given to his son the said cottage, and put him in possession of the rents, and that the pauper had contracted to sell the premises to the said *T. Bowring*; the father, by the direction, approbation, and consent of the pauper, in consideration of 25*l.*, assigned and conveyed the said cottage to *Bowring*, and the pauper ratified and confirmed the conveyance. The father and the pauper joined in the usual covenants to the purchaser. The pauper received the 25*l.* purchase-money from *Bowring*. During the three years above mentioned, the pauper resided in the parish of *Stratton*; and upon this evidence the sessions were of opinion that he had gained a settlement there.—Lord *Tenterden* C.J. The wife was not executrix. It was useless to enquire as to her possession of the indenture, after the evidence of *Sabine*, who had had, and looked into the master's papers.—*Per Curiam*. Here there was no actual conveyance from father to son, and the pauper could not ground an equitable interest on natural love and affection; such interest, if he had any, must have rested on the pecuniary consideration, and that was below 30*l.*—Order of sessions quashed.

SETTLEMENT BY ESTATE.

Of the Kind of Estate.—2 Bott, pl. 663.

165. *Rex v. Canford Magna*, T. T. 57 G. 3.—6 M. & S. 335. —Upon appeal the quarter sessions for the county of Dorset quashed an order of two justices for the removal of *R. Poulden* the younger, his wife and children, from the parish of *Canford Magna* to the parish of *Corfe Mullen*, subject to the opinion of this Court upon the following case:—The pauper was born in *Corfe Mullen* in 1786, and lived with his father till 1803, when he entered into the *Dorset* militia, as substitute for a person not belonging to or drawn for either the parish of *Corfe Mullen* or that of *Canford Magna*. He served in the militia eleven years and a half, and married about nine years ago. He has done no act to gain a settlement. *Richard Poulden*, the father of the pauper, gained a settlement in *Canford Magna*, forty years ago, by hiring and service. He went, about thirty-nine years ago, to live in the house of *John White*, in *Corfe Mullen*; and in the course of a year from that time married *White's* daughter, *Ann*, who was living with her father. The house was held by *White*, under a lease from Sir *James Hannam*, for ninety-nine years, determinable on three lives, one of which is still subsisting. Its yearly value is about forty-shillings. *White* died about thirty-six years ago intestate, leaving a widow, and *Thomas* and *Ann*, his only children, surviving. It did not appear that letters of administration of *White's* estate had been taken out. The widow, and *Poulden* the elder, and his wife, were all living in *White's* house at the time of his death, and continued to live there afterwards: the widow until her decease, about six years ago; and *Poulden* the elder and his wife to the present time,—they being, after her decease, in the sole occupation. The house is one undivided tenement: no rent was ever paid by any one, or demanded, except the lord's, or quit-rent, which has been paid by *Poulden* the elder to the present steward ever since he has been steward. *Thomas*, the brother-in-law of *Poulden* the elder, lived close by the said house. About fourteen or fifteen years ago, whilst *Poulden* the elder resided in *Corfe Mullen*, he received relief from *Canford Magna*. The pauper's wife also, while her husband was in the militia, received relief at *Exeter* from *Canford Magna* for several weeks. In August 1814, the gross sum of 6l. 10s., being sufficient for the weekly allowance of the pauper's family until May 1815, was remitted by the overseers of *Canford Magna* to *Exeter*, for the use of the pauper's family, he being then in the militia; and a part of that sum was paid weekly to the pauper's family at *Exeter* until May 1815. The pauper was discharged from the militia in February 1815.—Lord ELLENBOROUGH C. J. The presumption raised in *Rex v. Cold Ashton* (a) was, that the pauper and his wife had agreed with the other children for their shares. No such presumption has been drawn here; nor do I think the case admits of it. There is not any circumstance from which to infer an abandonment by any of the parties to the other of their rights. According to the facts, there was neither exclusive right nor exclusive possession. Had there

R. P. went about thirty-seven years ago to live in the house of *T. W.* in the parish of *C. M.*, and in the course of a year married *T. W.'s* daughter, who was living with her father. The house was held by the father under a lease for years, determinable on three lives. *T. W.* died about thirty-six years ago intestate, leaving a widow, a son, and his said daughter. The widow and daughter, with *R. P.*, her husband, were living in the house at *T. W.'s* death, and the widow continued there till her death, about six years ago, and the daughter and *R. P.* to the present time; but it did not appear that letters of administration were taken out: Held, that *R. P.* did not, by such residence, acquire a settlement in *C. M.*

(a) *Burr. S. C.* 444.

been a sole occupation, I am not prepared to say that it would have been enough in the present case, although it may be so in the case of a sole next of kin. (a)—BAYLEY J. I am entirely of the same opinion. At the death of *White* he left a widow, a son, and daughter. No one of these could say that the property was his or hers at that time. In order to make it the property of one or the other, it was necessary to obtain letters of administration. It belonged to the ordinary, according to his discretion, to grant administration to all, or two, or one of them. That discretion, however, was never exercised. If the case admitted of a different conclusion, it was for the court of quarter sessions to draw it; but I see no reason for coming to any conclusion different from that which they have drawn.—ABBOTT J. The pauper was emancipated about fourteen years ago; therefore his settlement, he not having acquired one for himself, must be the settlement of his father at that time. The question is, whether his father had then acquired a settlement by residing on a tenement in *Corfe Mullen*, which had belonged to his wife's father. In order to determine in favour of such a settlement, it must be presumed either that administration was granted to him, or to his wife, or to the widow, some or all of them. But are we at liberty to make any such presumption?—that is a presumption of fact, and not of law. The court of quarter sessions are judges both of the fact and law; and, if the presumption were warranted, might and ought to have drawn it; but they have not drawn it, and, in my opinion, they have done right in this. For the acts and conduct of the parties concerned must be taken altogether, before any presumption is raised upon them: and we find from these, so far from a presumption arising that the father was settled in *Corfe Mullen*, that about fourteen or fifteen years ago, the period of his son's emancipation, he received relief from *Canford Magna*, being then resident in *Corfe Mullen*. The sessions, therefore, could not do otherwise than conclude that at that time the pauper's father had not acquired a settlement in *Corfe Mullen*.—HOLROYD J. I am of the same opinion. *Rex v. Cold Ashton* was determined on principles which do not affect the present case. One of the questions there was, whether *Daniel Harrison*, the father, had acquired a settlement in his own right in *Cold Ashton*;—and it was decided that he had. The view which *Denison J.* took of the case was this: “The father, *Daniel Harrison*, was in possession of an estate of his own for “above twenty years; and he was not removable from it on account “of his property in it, which rendered him irremovable. It is not “material how he came into possession; for twenty years’ possession “will alone give him a settlement. Twenty years’ possession is “sufficient either to defend, or even to make, a title in ejectment.” The ground, therefore, of that decision was, that by a twenty years’ possession as his own, a man acquires such a positive right as renders him irremovable from it. That principle cannot be applied here, because there has not been any such possession. It was also observed by *Wilmot J.* in that case, “that a twenty years’ enjoyment “and continuance, even upon a possession by wrong, gives a legal “title upon an ejectment, even against the rightful owner; and “after such a length of possession, one would be inclined to pre-

(a) See *Rex v. Horsley*, 8 East, 405.

"sume as much as is possible." The facts here stated are not sufficient to raise any presumption, supposing that it were competent to this Court to draw any.—Order confirmed.

166. *Rez v. Long Bennington*, T. T. 57 G. 3.—6 M. & S. 403.—On appeal, the sessions quashed an order for the removal of *Joseph Clarke*, his wife and children, from *Long Bennington*, in the parts of *Kesteven*, in the county of *Lincoln*, to *Staunton*, in the county of *Nottingham*; subject to the opinion of this Court on the following case:—The pauper *Joseph Clarke*, when unmarried, was hired and served for a year in *Staunton*, and received his year's wages; he afterwards agreed with one *Blagg* for the purchase of a copyhold house and an acre of land, in the parish of *Edingley*, for 150*l.* He paid the sum of 34*l.* on the account of the purchase-money, and thereupon entered into possession of the house and land in part performance of the contract, and continued to reside therein as owner, under such purchase, for nearly six months. There was not any agreement in writing between these parties, nor was any surrender ever made. After the pauper had thus been in possession of the house and land for nearly half a year, a difference arose between him and *Blagg* as to the loan of a part of the purchase-money remaining unpaid, which the latter had agreed originally to lend, or forbear payment of to the pauper; whereupon the parties agreed to rescind the contract, and that the possession should be restored, the pauper consenting to take back 14*l.*, part of the 34*l.* he had paid, and *Blagg* retaining the remaining 20*l.* The court of sessions quashed the order of removal, on the ground that the pauper had gained a settlement in *Edingley*, by a residence of more than forty days upon the estate he had so agreed to purchase, and as equitable owner thereof. If the Court shall be of opinion that such residence did confer a settlement in *Edingley*, the order of sessions to be confirmed; if not, to be quashed.—Lord ELLENBOROUGH C. J. I own that my mind was under an impression that a settlement was gained, until I heard the argument that has been last addressed to us. The question arises upon the construction of an act of parliament, which is couched in negative terms; the act prescribes that no person shall be deemed to acquire any settlement in any parish or place by virtue of any purchase of any estate or interest in such parish or place, whereof the consideration for such purchase doth not amount to the sum of 30*l. bond fide* paid, for any longer time than such person shall inhabit in such estate. (a) There is no question about the amount. The question is, whether there was any purchase; it is argued that there was none. What, then, is the meaning of this word purchase? In point of law, I should say, in general, that there is no purchase until the consideration is paid or provided for. Yet, in equity, it is said, there may be that which amounts to a purchase, although the consideration be not paid. Granting that there may be; yet at least one should expect an offer or readiness to pay the purchase-money. In a case like the present, it may be that a court of equity would not interfere. And is the court of quarter sessions to sit and hear argued matters of doubtful equity? Here was but a part payment, the purchaser might not be able or willing to pay the remainder. I cannot, therefore, pronounce that this was any thing like a clear equitable interest; and if not, it

Where *J. C.* agreed by parol to purchase a copyhold house and land for 150*l.*, and paid 34*l.* on account of the purchase, and entered into possession in part performance of the contract, and continued in possession, as owner under such purchase for nearly six months, but no surrender was made, and a difference arising between him and the vendor as to the loan of part of the unpaid purchase money, the parties agreed to rescind the contract, and that possession should be restored, *J. C.* consenting to take back 14*l.* : Held, that this was not such a purchase as would confer a settlement on *J. C.*

(a) See 9 G. 1. c. 7. s. 5.

does not appear to me that it was a purchase within the meaning of the act.—BAYLEY J. I am of the same opinion, that this was not a purchase within the meaning of the act. Before the passing of this statute, the amount of the purchase-money was immaterial. The language of the statute is, “estate or interest.” Now, here, can it be predicated of this bargain that the pauper purchased any “estate or interest?” The bargain was not for the purchase of part of an estate, but of the whole, for 15*l*. He pays part only. Could he be entitled to the estate, or go to a court of equity to compel a conveyance, unless he had paid, or at least was ready to pay, the whole? I should think not; but it is enough if it be a doubtful question. I am of opinion, therefore, that this case does not fall within the words of the statute. The court of quarter sessions may look at plain cases of equitable title, but surely are not to be distracted by discussing matters of doubtful equity.—ABBOTT J. I am also of opinion that the pauper cannot be considered as the purchaser of an estate or interest within the meaning of the statute. It is clear that he had not the legal estate; but it is said that an equitable interest is sufficient. Where the entire purchase-money has been paid, a court of equity will consider the vendor as a trustee for the purchaser; but here not a fourth part of the purchase money was paid. Until more was done, the seller, as it seems to me, could not be considered as a trustee for the buyer. All that the buyer had acquired, was a right of doing something more himself, to call on the vendor for performance; which however, he abandoned.—HOLROYD J. I have had some difficulty as to whether this might not be considered as a purchase within the words of the statute. There was an agreement on the one part to buy, and on the other to sell, and a part performance. I have doubted whether that did not amount to a purchase within the meaning of the act. In one sense, perhaps, it may be considered as a purchase; although in common parlance it is not a purchase until paid for. Upon further consideration, however, I think the act requires, in order to constitute it a purchase, that the entire consideration should be paid, or at least should be ready to be satisfied. Here, although more than the sum of 30*l*. was paid, yet the whole consideration was neither paid nor provided for. And it seems to me that the party would not be entitled to have his purchase completed until this was done. The act, I think, speaks of a purchase as of a matter where the consideration is settled. This view of the case removes my difficulty, and I am satisfied the case does not come within the statute.—Order quashed.

A woman seised of a messuage, &c. in the parish of A., as tenant in common with her three sisters, married, and for some years resided with her husband in the parish of B., where he was legally settled. The husband was transported,

167. *Rex v. Brington*, M. T. 8 G. 4.—7 B. & C. 546.—Upon appeal against an order of two justices, whereby they removed *Maria*, the wife of *Edward Chambers*, then a convict at *Van Dieman's Land*, and *Mary Elliott*, their daughter, from the parish of *Brington*, in the county of *Northampton*, to the parish of *Badby* in the same county; the sessions quashed the order subject to the opinion of this Court, as to whether, under the following circumstances, the pauper was removable:—*John Elliott*, in consideration of a marriage intended between himself and *Mary Thornton*, by indentures of lease and release, and settlement of the 6th and 7th January 1772, granted and released a messuage in *Little Brington*, and about twenty acres of land, to trustees to the use of himself till the marriage; remainder to himself for life; remainder to trustees to support contingent re-

mainders; remainder to the use of the said *Mary Thornton* for life, in full of jointure; remainder to trustees, their executors, &c. for 500 years, from the decease of the survivor of the said *John Elliott* and *Mary Thornton*, subject to the trusts thereafter declared; and after the expiration of the said 500 years and subject thereto; remainder to the use of the first son of the body of the said *John Elliott* on the body of the said *Mary* lawfully to be begotten, and the heirs of such first son lawfully issuing; remainder to the use of the second, third, fourth, and all, and every other, the son and sons of the body of the said *John Elliott* on the body of the said *Mary* lawfully begotten, successively, in seniority of age and priority of birth, and the heirs of his and their body and bodies lawfully issuing, the elder of such son and sons, and the heirs of his and their body and bodies being to be preferred; remainder to the use of all and every the daughter and daughters of the said *John Elliott* on the body of the said *Mary* lawfully to be begotten, and the heirs of the body and bodies of all and every such daughter and daughters, the said daughters, if more than one, to take as tenants in common; and for want of such issue, to the use of the said *John Elliott* his heirs and assigns for ever. The marriage took effect, and there was issue four sons and eight daughters, all of whom died without issue in the lifetime of their mother, except four daughters, viz., *Elizabeth*, *Alice*, *Maria*, and *Sophia*, who survived her. *Maria*, the pauper, intermarried with, and is now the wife of *Edward Chambers*, whose legal settlement is in the parish of *Badby*, where she was living until *February* 1826, (her husband being at that time, and continuing at the date of the order of removal, absent from England), when she went to *Brington* (the parish in which the property lies) to her sister's, who lived in the house mentioned in the marriage settlement, and resided there thirteen weeks until she was removed to *Badby*.—*BAYLEY J.* The sessions by quashing the order of removal, both as to the mother and daughter, have virtually decided that the child was within the age of nurture, and therefore, not removable from her mother. There is no ground for reversing the order of sessions in that respect. As to the principal point, the question is, not as to the place where the wife is settled; that without doubt is in her husband's parish, *Badby*. This is a case in which the party goes to her own estate of which she has a seisin. The husband had no sole seisin, for when an estate in fee comes to a feme covert, the interest of the husband and wife is a seisin in fee in both in right of the wife, *Polyblank v. Hawkins*; (a) *Rex v. Aythorpe Rooding* (b) is not so strong a case as the present; there the property was the husband's, while here it is the property of the wife, descendible to her heirs. There is no distinction between a sole occupation and an occupation in coparcenary. Although no partition had been made, the wife had a right to say she would occupy her part and not suffer other persons to occupy it. And there might be a good reason for it here, as by the husband's absence abroad it might have been difficult for her to collect the profits without residence. The pauper, therefore, was irremovable, though she could not have gained any settlement by her residence in *Brington*.—*HOLROYD* and *LITLEDAL* Js. concurred.—Order of sessions confirmed.

and the wife some time afterwards went with her daughter to live in the messuage in *A.*, in which one of her sisters resided: Held, that she was irremovable; and that the sessions having quashed an order removing her and her daughter, it was presumed the latter was within the age of nurture, and therefore was irremovable.

(a) *Doug.* 329.(b) *Burr. S. C.* 412.

Testator, by his will, devised to his daughter *Elizabeth*, the widow of his late son *T. M.*, part of a messuage or tenement therein described, to hold to her and her assigns for and during the term of her natural life, if she should so long continue a widow and unmarried, and from and after her decease, or day of marriage, which should first happen, he gave and devised the premises, before given to his wife, and also other real property therein mentioned, unto the four children of his late son, *T. M.* deceased, in fee: Held, that by this devise, the children of *T. M.* took no estate in any part of the property devised till after the death of *Elizabeth*, and consequently, that one of them, a pauper, who came, during the lifetime of his mother, to reside in the parish where the lands not given to *Elizabeth* for life were situate, gained no settlement by estate.

168. *Rex v. Ringstead*, *H. T. 9 & 10 G. 4.*—9 *B. & C. 218.*

The burgesses of the borough of *B.* were entitled to receive such share of the rent of certain estates as the corporation at large should allow to them. The estates were vested in the corporation at large, and demised by lease, whereby the rents were reserved to the corporation: Held, that a freeman of *B.*, who resided in the borough, and was in the receipt of a portion of the rents, which had been assigned to him by the corporation, did not thereby gain a settlement by estate.

169. *Rex v. Belford*, *M. T. 10 G. 4.*—10 *B. & C. 54.*—Upon an appeal against an order of two justices, whereby *Grace*, the wife of *John M'Queen*, then a prisoner in the gaol of *Berwick*, and their five children, were removed from the parish of *Berwick-upon-Tweed* to the township of *Belford*, in the parish of *Belford*, in the county of *Northumberland*, the sessions confirmed the order, subject to the opinion of this Court on the following case:—The pauper, *John M'Queen*, is a burgess of the borough of *Berwick-upon-Tweed*, and in 1807, being then settled in *Belford*, came to reside in the parish of *Berwick-upon-Tweed*, where he continued to be resident at the date of the above order of removal, at which time he was a prisoner in *Berwick* gaol, and his wife and five children became chargeable to the parish of *Berwick-upon-Tweed*, having no settlement but such as was derived from him. *John M'Queen*, for the last three years of his residence in the parish of *Berwick*, enjoyed as such burgess certain pecuniary benefits arising out of the estates of the corporation lying in the same parish in the manner after mentioned. The mayor, bailiffs, and burgesses, of the borough of *Berwick*, by virtue of a charter granted in the first year of King *James the First*, and confirmed by act of parliament, hold, to the only proper use of them and their successors, a large estate in land, situate in the parish of *Berwick-upon-Tweed*, which parish is co-extensive with the borough. This estate is chargeable, in the first instance, with the payment of salaries of officers and other corporation expenses imposed by the charter; but has from an early period after the grant of the charter, and from thence hitherto, been distributed into three portions, and each portion applied to distinct purposes. The first portion consists of several farms, which are demised to tenants by the mayor, bailiffs, and burgesses; the rent being reserved to the said mayor, bailiffs, and burgesses, or their treasurer for the time being, and collected by him. This rent, together with the proceeds of other property, called the town's ancient revenue, now form a separate fund, out of which the salaries of the officers and other corporate expenses, authorised by the charter, are defrayed. These farms are called treasurer's farms. The second portion is subdivided into several parcels, varying in quantities from an acre and a half to two acres and a half, and in value from 4*l.* to 9*l.* per annum. These are called meadows; and at an annual meeting of the burgesses, called a meadow guild, are distributed, as they become vacant by the death or non-residence of the last occupiers, among the senior resident burgesses and widows of burgesses, who succeed to the rights of their husbands as to meadows and stints, though the charter has no provision in behalf of the widows; the oldest resident burgess being entitled to choose the most valuable vacant meadow, and so on in

succession down to the junior, till the number of vacant meadows is exhausted. The burgesses may either occupy these meadows themselves, or let them to tenants, reserving the rents to themselves. The lands forming the third portion were, up to the year 1761, open fields upon which each burgess was entitled to a certain right of depasturing; but at that period they were inclosed, and have ever since been let in guild as farms to tenants for various terms of years, and are now demised by lease under the corporation seal; and the rent has been, since the year 1810, uniformly reserved to the mayor, bailiffs, and burgesses, (which is the name of incorporation,) their successors or assigns, or to their treasurer for the time being. Previous to that period, however, several instances occur of leases of stint land, wherein the reservation of the rent was made "to the mayor, bailiffs, and burgesses, their successors or assigns, or to their treasurer for the time being, or to the several respective burgesses, or burgesses' widows, who should, from time to time, during the said term, have shares in the said farmhold, in equal portions." The rent of each farm is divided into a certain number of equal portions, generally eleven, but in a few instances twenty-two. At another annual meeting, called a stint guild, a portion is allotted upon a specific farm to each resident burgess, or burgess's widow, or to as many of these as there are vacant portions. These portions are called stints, and they, like the meadows, vary in value, from 2*l.* to 9*l.* per annum: the senior burgesses being in like manner entitled to a preference as the more valuable stints become vacant; the younger burgesses succeeding as vacancies by the death, removal, or promotion of their seniors occur. The portions of the rents called stints are paid annually, by the treasurer of the corporation, to the burgesses who are entitled to them; but, until the last fourteen or sixteen years, the burgesses in many instances received their stint money immediately from the farmers or lessees of the specific farms upon which their several stints were assigned. The burgesses in guild have by their charter a power of making bye-laws for the good rule and government of the corporation, and for the better preserving, governing, disposing, letting, and demising of their lands, &c. In the exercise of this right, the burgesses assembled in guilds make bye-laws to regulate the enjoyment of the meadows and stints, and have prescribed the conditions of husbandry under which meadow and stint lands may be broken up and converted into tillage, and (in the case of the meadows) the term for which they may be let by the individual burgesses to whom they are allotted. They also decide upon the title of those who claim to enjoy meadows and stints, according to such bye-laws; and instances occur upon their records of forfeitures both of meadows and stints, either absolute or for limited periods, inflicted by the burgesses in guild for infraction of bye-laws, or other gross misconduct. But unless there be such forfeiture, or the party either become non-resident or relinquish his stint or meadow, by choosing one of more value, he may remain in the enjoyment of the stint or meadow, which has at the first been allotted to him, for the term of his life. Some burgesses are permitted to enjoy one stint only, others two stints, and others again one meadow and one stint. Those who enjoy two stints are said to hold one of the stints for or in lieu of a meadow.—The pauper, *John M'Queen*, was for three years next preceding this order of removal, and still is in the enjoyment of one stint assigned upon a

farm within the parish and borough of *Berwick*, called the *Burrs*, and annually receives from the treasurer of the corporation, for his portion of the rent, the sum of 3*l.* 5*s.* 9*d.*; he also is in the enjoyment of another portion assigned upon another farm called No. 12. of the outfields, under the description of stint for a meadow: his share of the rent of the last named farm being 3*l.* 1*s.* 9*d.* The rents of these two farms are now, and having been during the entire period of the pauper's sharing in them, reserved to the mayor, bailiffs, and burgesses, or to their treasurer, and these rents are received by the treasurer, and the above sums are paid to the pauper by him. The pauper is not at present entitled to a meadow, but he will be entitled (if he so long lives) to claim one as soon as a vacancy occurs in regular rotation. The pauper, in his character of a burgess of the borough of *Berwick-upon-Tweed*, is a member of the assemblies of burgesses, called guilds, held under the provision of the charter or otherwise, and therefore entitled to a vote as well in the meadow and stint as in other guilds. The question for the opinion of this Court was, Whether the pauper, *John M^cQueen*, was, during his residence under the above circumstances in the parish of *Berwick-upon-Tweed*, irremovable therefrom, so as to acquire a settlement in the said parish, to be communicated to his wife and children.—Lord TENTERDEN C. J. I am of opinion that the husband of the pauper was not seised of any legal or equitable estate: that being in the corporation. He was only entitled to such a portion of the rents as the body corporate might think fit to allow him. Whether they allowed him a portion of those rents, first throwing the whole together and then dividing them amongst the freemen, or whether they assigned to each freeman the rent of a particular portion of land, seems to me immaterial. The freemen had no right to enter on the land.—BAYLEY J. *Rex v. Warkworth (a)* shews that a burgess entitled to a right of common is not settled by residing in the borough. Being a freeman, and entitled as such to certain local privileges, did not give the husband of the pauper any estate, legal or equitable; and if he had no estate in the land, he had no right to occupy. The estate was in the corporation.—PARKE J. The pauper had nothing but a privilege of taking a portion of the profits of the land at the will of the corporation.—Order of sessions confirmed.

An estate in remainder will not confer a settlement. It must be vested in possession.

170. *Rex v. Willoughby with Sloothby, M. T. 10 G. 4.—10 B. & C. 62.*—Upon an appeal against an order of two justices, whereby *W. Stokes*, his wife, and children, were removed from the parish of *Huttoft*, in the parts of *Lindsey*, in the county of *Lincoln*, to the parish of *Willoughby-with-Sloothby*, in the same parts and county, the sessions confirmed the order, subject to the opinion of this Court on the following case:—The pauper, *W. Stokes*, being settled in the parish of *Willoughby*, *J. Neal*, by indentures of lease and release, dated the 19th and 20th May 1823, in consideration of 105*l.*, conveyed a parcel of land and two unfinished dwelling-houses, situate in the parish of *Huttoft*, to the use of *Elizabeth Stokes*, for life or during widowhood, remainder to the use of the pauper *W. Stokes* in fee. The 105*l.* was money which had been bequeathed by the father of the pauper to him absolutely, and the interest of which the pauper had subsequently, by his deed, in consideration of natural love and

(a) 1 M. & S. 473.

affection and 10s., settled upon his mother for life or during widowhood; the principal, after her death, to be paid to himself: a further sum of 50*l.* was expended by the pauper after the execution of the conveyance in finishing the dwelling-houses; which sum had been bequeathed by the pauper's father to trustees, in trust to pay the interest to the widow during her life or widowhood, and the principal, after her death or marriage, to the pauper. The pauper paid the interest of 105*l.* to the trustees, and the trustees paid it over to the mother. The pauper entered upon one of the houses and part of the land at the time of the execution of the conveyance. The mother let the other house and remainder of the land for the space of one year after the execution of the conveyance; at the expiration of which year the mother told the pauper she would deliver up all the premises to him, and that he might do as he liked with them. The pauper then entered into possession of the other house and land, and let it, and received the rent, and never accounted for it to his mother, and continued to occupy the same house he had previously occupied until both were sold in May 1828, and conveyed by deed, to which his mother, who remained a widow, was a party. The pauper received the whole of the purchase money, and did not account for it to his mother. They both joined in the receipt to the purchaser.—BAYLEY J. Ever since the case of *Rex v. Eatington*, (a) it has been an established principle of settlement law, that a party cannot gain a settlement by residence on an estate in which he has not a freehold vested in possession. Here the pauper had a freehold estate in expectancy only, viz. in remainder, which implies a preceding estate of freehold in some other person. The cases of *Rex v. Houghton le Spring* (b) and *Rex v. Staplegrove* (c) only shew that where a present estate of freehold is vested, the premises need not be in the owner's occupation. In the first of those cases, the pauper, being seised of a freehold house, let it at three pounds per annum; and he was held to gain a settlement by residing as a lodger with his tenant, to conduct alterations in the premises; but the present freehold interest was then vested in him. In *Rex v. Staplegrove*, the father of the pauper's wife, having let to the parish-officers and their successors his freehold cottage for 1000 years, was placed in it and died there; and his daughter and her husband continued to reside there five years; and it was held that they gained a settlement. In that case, the estate of freehold in possession was in the pauper's wife (a chattel interest only having been granted by her father to the parish officers). In this case, the pauper never had any other estate of freehold in the premises than one in remainder. His mother had the estate of freehold in possession.—LITLEDALE J. concurred.—PARKE J. The question raised in this case was expressly decided in *Rex v. Eatington*, and was considered by the Court as settled law in *Rex v. Ringstead*. (d)—Lord TENTERDEN C. J. I entirely concur in the judgment given by my learned brother.—Order of sessions confirmed.

171. *Rex v. Chew Magna*, E. T. 10 & 11 G. 4.—10 B. & C. 747. A. being seised in fee of a close of land, gave a small piece by parol to B.,—Upon appeal against an order of two justices, whereby James Naish and Joanna his wife were removed from the parish of Ubley, in the county of Somerset, to the parish of Chew Magna, in the same

(a) 4 T. R. 177.

(c) 2 B. & Ad. 527.

(b) 1 East, 247.

(d) Ante, pl. 168.

who built a cottage on it, and resided in it fifteen years, when A. told him he had sold the land to C., and asked B. to give him possession and to sell him his right; A. agreed to give B. 3*l*. for giving possession, and that B. should take the materials; B. pulled down the cottage and carried away the materials, and delivered possession to C.: Held, that B. did not gain any settlement by residing in the house.

county, the sessions confirmed the order, subject to the opinion of this Court on the following case:—*William Bath*, about 1795, being seised in fee of a close of land in the parish of *Ubley*, gave a small piece thereof by parol to his nephew *James Naish*, the pauper, whereon to build a cottage. *Naish*, who had no settlement in *Ubley*, took possession of the spot, and built his cottage, and inhabited it with his family. In October 1800, while he so resided in *Ubley*, his wife and children became ill, and he applied to the overseers of that parish for relief, and received the same; and on their complaint, an order for the removal of *Naish*, his wife and children, to the parish of *Chew Magna* was made by two justices of the peace, and *Naish* was under that order removed and delivered to the overseers of *Chew Magna*, who relieved *Naish* from time to time. *Naish* slept in that parish for one night only, and the next day returned to the cottage in *Ubley*, from whence neither his wife or children, on account of their illness, had been removed. *Naish* continued to reside there till about 1810, when *Bath* told him that he had sold the ground to one *Carpenter*, and asked *Naish* to give him free possession, and to sell him his right. *Naish* was unwilling to do so; but before *Naish* said any thing, *Bath* proposed that *Naish* should receive 3*l*. for giving such possession, and should take away the materials of the cottage. *Naish* never paid *Bath* any acknowledgment. *Bath* paid the 3*l*. to *Naish*, and *Naish* pulled down the cottage, carried away the materials, and delivered possession to *Carpenter*. No writing passed on the occasion. The question for the opinion of this Court was, Whether the pauper, *James Naish*, gained a settlement in *Ubley*?—Lord TENTERDEN C. J. There is no ground for contending that *Carpenter*'s occupation is to be considered a continuance of the estate of *Naish*; and if that be so, there was no more than a possession for fifteen years. The adverse possession in the cases cited had continued for more than twenty years. There is no authority to shew that a residence on an estate at will of a value less than 10*l*. per annum can confer a settlement.—BAYLEY J. Undisturbed possession for twenty years confers an estate. It is evidence for a jury to presume a grant. Here there was only possession for fifteen years. It is said possession of *Carpenter* is possession of *Naish*. But *Carpenter* came into possession, not under *Naish*, but under his uncle *Bath*.—LITLEDALE J. I think that *Naish* was no more than a tenant at will to his uncle. There is no authority to shew that a mere tenant at will can gain a settlement by residing upon an estate of less value than 10*l*. a year.—Order of sessions confirmed.

A pauper was hired as shepherd, by the tenantry farmers of a manor, for a year, to keep the tenantry flock; he was to receive 14*s*. per week, and to have a piece of land called *The Shepherd's Croft*, which was to make up money

172. *Rex v. South Newton*, E. T. 10 & 11 G. 4.—10 B. & C. 838.—Upon an appeal against an order of two justices, whereby *Thomas Brown*, his wife and three children, were removed from the parish of *Woodford*, in the county of *Wilts*, to the parish of *South Newton*, in the same county, the sessions confirmed the order, subject to the opinion of this Court on the following case:—The pauper in 1823, while single, was hired as shepherd by the tenantry farmers of the manor of *Lower Woodford*, for eleven months at 14*s*. per week, and was to have a piece of land called the *Shepherd's Croft*, which was to make up money as good as 16*s*. a week, to keep certain sheep belonging to them called the *Tenantry Flock*. Payment of his monied wages was made quarterly by the tenantry farmers. The pauper, after serving eleven months, was hired again for one month,

Before the end of the month, the pauper was hired "to go on again upon the same terms." He served a year under this last hiring, and slept the last forty nights at *South Newton*, the appellant parish, having married in the course of that year. The tenantry farmers above mentioned are leaseholders and copyholders of the manor of *Lower Woodford*. By an agreement under seal, made June the 12th, 1799, the parties to which were the bishop of *Salisbury*, lord of the manor of *Lower Woodford*, the leaseholders and copyholders of that manor, and *Wm. Beckford of Fonthill Gifford, Esq.*, who then held the manor under the bishop for three lives, reciting among other things, that the leaseholders and copyholders were entitled to divers lands within the manor, by virtue of the several leases and copies to them thereof granted, arbitrators were duly appointed for dividing and allotting the open and common fields, and common downs within the said manor. The powers of these arbitrators were "to set out, ascertain, and allot the said open and common fields and common downs so intended to be divided and allotted as aforesaid, unto and amongst the said *W. Beckford*, in respect of such lands as he had in hand or at rack rent, and the several leaseholders and copyholders entitled to or interested in the same, in proportion to their several and respective shares, interest, and properties in and over the said open or common fields or downs." They were also empowered to set out ways, and in some respects to direct the course of husbandry. And it was agreed that the persons to whom allotments should be made, should be possessed of them for the same estates, terms, and interests, and subject to the same rents and services as the several lands in lieu whereof such allotments should be made, were then subject to. Neither the shepherd of the tenantry farmers at that time, nor the pauper *Thomas Brown*, was a party to the agreement. The arbitrators appointed by the agreement, made an award dated the 10th of *October* 1818, which has been acted on ever since. By the award, among other allotments, they allotted to *W. Beckford, Esq.*, lord or farmer of the manor of *Lower Woodford*, in trust for the shepherd or keeper of the common sheep flock of *Lower Woodford*, for the time being, in lieu of lands in the common fields, held by custom by the said shepherd, "two allotments of land, (that is to say) one piece of enclosed pasture marked V, containing thirty perches, and one piece of enclosed arable land marked V, containing three roods and twenty-four perches, the shepherd for the time being keeping the fences of the same in repair." This was the land which the pauper took when he was hired as shepherd as above, and which had been possessed by former shepherds since the time of the award. The pauper let part of the land to a tenant from year to year for about 5*l.*, and received the rent; a part he always occupied himself, but never paid rates. He is still shepherd, and at the time of his removal was resident in *Woodford*, and had been so, more than forty days. Becoming chargeable, he was removed by order of two justices to *South Newton*, without any objection on the part of his masters, or any interruption to his service, or his possession of the said *Shepherd's Croft*, both of which he still retains.—Lord TENNERDEN C. J. I am of opinion that the pauper took no interest in he was hired as shepherd, and he let part of this land to a tenant: Held, that the pauper took the land in his character of servant in lieu of wages, and not under the award, and consequently that he gained no settlement by estate.

the land by virtue of the award or allotment. The award itself was void for many reasons. The shepherd, therefore, could derive no legal interest from it. All the interest which he had he took in his character of servant from year to year. He was tenant to those with whom he made the bargain, and his enjoyment of the land was in lieu of wages, which would otherwise have been paid for his service. —BAYLEY J. I am of opinion that the pauper was settled in *South Newton* by virtue of the hiring and service for a year. It appears that he was hired for eleven months, and afterwards for a month, and then he was hired to go on again on the same terms: that was an indefinite hiring, and, therefore, a hiring for a year; and as he resided in *South Newton* the last forty days, he was settled in that parish. The agreement made the 12th of June 1799 was binding upon those persons who were parties to it. The effect of it was, that whenever a shepherd should be appointed, he should have an allotment for his own use; it did not operate as a conveyance, but merely as an agreement between the several parties who signed it. As soon as the shepherd was appointed, he took the land, not by virtue of the articles of agreement, but by virtue of the contract of hiring. He was hired upon terms and conditions which were pointed out to him: one of them was, that he should have *Shepherd's Croft*, which, with the wages of 14s. a week, was to make it as good as 16s. per week. The persons who hired him, therefore, did confer upon him the right to occupy the land for such period of time as he should faithfully perform the office of shepherd. This right to hold the land was founded on his contract with them. The settlement, therefore, was in *South Newton*. —LITLEDAL J. It appears that there was a custom to appoint a shepherd to attend the flocks, and that person was usually allowed the use of some land. By the agreement of 1799 arbitrators were appointed to divide the waste land, and the allottees were to hold their allotments for the same estates and interests as the lands in respect of which the allotment should be made; but as the lord of the manor, his lessee, and the copyholder and leaseholder, were in the habit of allowing the shepherd a piece of land, I think the pauper did not acquire, in this case, an interest sufficient to confer a settlement. Suppose there had been an agreement in writing to take care of flocks, and that, in lieu of wages, the exclusive use of the land should be given to the shepherd, his interest in the land would be co-extensive with the time during which he was to remain shepherd. During one year, therefore (the period for which he was hired), he would be entitled to the exclusive use of the land; but that was not such an interest as would give him a settlement by estate. For that purpose, he must be the substantial owner of the property. —PARK J. The sessions have come to the right conclusion. It is said that the pauper took either a legal or equitable estate by virtue of the award. He took neither. The parties to the submission were the Bishop of *Salisbury*, the lord of the manor, and his lessees of the manor, the leaseholders and copyholders. Now the shepherd was not a leaseholder or copyholder of the manor, nor lessee of the manor. The arbitrators, therefore, had no power whatever to allot to him, and pro tanto, therefore, the award is bad. He had a right to occupy the land for part of the year; that was not a settlement by estate, but a coming to settle on a tenement under 10l. a year, and, therefore, no settlement was gained.—Order of sessions confirmed.

173. *Rex v. Wooburn, E. T. 10 & 11 G. 4.—10 B. & C. 846.*—The husband of a pauper being settled in parish *A.*, in 1800 enclosed a small piece of waste land in parish *B.* from a common, and held and cultivated it until Christmas 1827, when he sold it and conveyed it to a purchaser. From the year 1800 to 1825 *Dennis Beal* resided out of parish *B.*; but in the year 1825 he removed to that parish, and in 1826 built a hut on the land, and lived in it a year and a half. In the years 1806, 1811, and 1817, the parish officers and freeholders perambulated the parish for the purpose of marking their boundaries, and asserting their rights of common. On those occasions they pulled up a portion of the fence to the land so enclosed, and dug up part of the bank, and rode through the enclosure. In 1820 or 1822 a like perambulation was made by the direction of the lord of the manor, when similar acts were done. No acknowledgment was paid to the lord of the manor for the land.

Upon appeal against an order of two justices, whereby *Hannah Beal* and her four children were removed from the parish of *Wooburn*, in the county of *Bucks*, to the parish of *Chipping Wycombe*, in the same county, the sessions quashed the order, subject to the opinion of this Court on the following case:—In the spring of 1800, *Dennis Beal*, the husband of the pauper *Hannah Beal*, and the father of the other paupers, being settled in the parish of *Wooburn*, enclosed a small piece of waste land from a common in the adjoining parish of *Chipping Wycombe*, and surrounded it by a bank, on which he planted a quick fence: he held and cultivated this land, subject to such interruption as after mentioned, until Christmas 1827, when he sold it for 10*l.*, and conveyed it by deed to the purchaser. From the year 1800 to the year 1825 *Dennis Beal* resided out of the parish of *Chipping Wycombe*. In the year 1825 he removed to a cottage in that parish, but not on the land in question. In the year 1826 he built a hut on the said land, and was provided with straw to thatch it by one of the overseers of the parish of *Wooburn*; and up to the time of his building the hut he continued to receive relief from the parish officers of *Wooburn*. He lived in the hut a year and a half. In the years 1806, 1811, and 1817, the parish officers and freeholders perambulated the parish for the purpose of marking the boundaries, and asserting their rights of common, by throwing open encroachments on the waste. In the first year they pulled up a large portion of the fence to the said land enclosed by *Beal*, dug up part of the bank, and rode through the enclosure. In the two subsequent years they made a large gap in the fence, and again rode through the enclosure with the same object. In the year 1820 or 1822, but to which of those years in particular the witness could not speak positively, a similar perambulation was made by direction of the lord of the manor, when similar acts were done for the like purposes. It did not appear that *Dennis Beal* was present on either of these occasions, nor did it appear that any acknowledgment was paid by him to the lord of the manor, or any other person, during his occupation of this enclosure, nor that either the commoners or the lord of the manor commenced any action, or did any other act to assert their rights, except as before mentioned. The question for the opinion of this Court was, whether, notwithstanding the interruptions before stated, *Dennis Beal*, by his occupation and residence upon the land in question, gained a settlement in *Chipping Wycombe*?—*BAYLEY J.* There is no proof that the profits of the land were taken by the person who made the perambulation. The acts done by them would amount to no more than a mere entry, and that, even if made within twenty years, by the stat. 4 & 5 Ann. c. 16. *s.* 16. not being followed up by an action within a year, is no bar to the statute of limitations.—*LORD TENTERDEN C. J.* Suppose the lord had brought an ejectment, would these acts of interruption have been sufficient to entitle him to recover in ejectment?—*PARKE J.* There is great difficulty in saying that the lord could take advantage of the entry made by the parishioners in 1806, 1811, and 1817. It was not made for his benefit but for that of the parish.—*LORD TENTERDEN C. J.* There has been an adverse possession for twenty

Held, that there was an adverse possession, and that the husband of the pauper gained a settlement by estate in *B.*

years, and the husband of the pauper gained a settlement by estate in *Chipping Wycombe*. The order of sessions must, therefore, be quashed.—Order of sessions quashed.

W. P. being lessee of a tenement for ninety-nine years, determinable upon three lives, invited *W. B.*, who had married his daughter, to reside upon part of the premises. The latter did reside there until the death of *W. P.* in 1791. *W. P.* left a widow, three sons, and a daughter, the wife of *W. B.*; and *W. B.* and his wife continued after the death of her father to reside on the same part of the premises occupied by them before; two of the sons of *W. P.* occupying other parts, and each of them paying one third of the rent, *W. B.* paying the other third.

A part of the premises having fallen into decay, one of the sons of *W. P.* gave it up, and *W. B.* had possession of that part, and afterwards paid two thirds of the rent, and he continued to occupy until 1823, when the last of the lives dropped, and since that time he continued in possession by permission of the landlord. It did not ap-

174. *Rex v. Okeford Fitzpaine*, *T. T.* 11 *G.* 4 & 1 *W.* 4.—1 *B.* & *Ad.* 254.—Upon appeal against an order of two justices, whereby *W. Brown*, labourer, was removed from the parish of *Bere Regis* in the county of *Dorset*, to the parish of *Okeford Fitzpaine* in the same county, the sessions confirmed the order, subject to the opinion of this Court on the following case:—The pauper was born in the parish of *Okeford Fitzpaine*. In 1761 *William Phelps* took a lease of a tenement in *Bere Regis* for ninety-nine years, determinable upon three lives,—his own, that of his wife, and that of a son named *Henry*, at a rent of 7s. a year. The tenement consisted, at that time, of two cottages, with outhouses, garden, and other appurtenances. *William Phelps* entered and continued in possession, except as hereinafter mentioned, till the time of his death. About fifty years ago, the pauper, who had married *Priscilla*, daughter of *William Phelps*, was invited by his father-in-law to reside on the premises, and upon that invitation went to reside there with his wife. The part of the premises inhabited by the pauper and his wife had been a fuel-house under the same roof with the dwelling of *William Phelps*, and having the same outer door. They had also a portion of the garden allotted to them. The pauper, at his own expense, converted the fuel-house into a habitation, and two or three years afterwards pulled down the front of that part of the building which he occupied, and built it up again a few feet in advance of its former position, carrying on the side walls to the new front, throwing out a new door in the latter, and building up the old interior communication with the other part of the dwelling. He also built a carpenter's shop on a part of the garden which was allotted to him. By an arrangement between the pauper and his father-in-law, the former, both before and after the alteration of the building, paid the whole of the annual rent, and continued to pay it until the death of *William Phelps*. *William Phelps* died in 1791, leaving a widow, the son *Henry* before mentioned, a son named *John*, another son, and the above mentioned daughter *Priscilla*, the wife of the pauper. After the death of *William Phelps*, the pauper and his wife continued in the occupation of the same part of the premises, the pauper and *John* and *Henry Phelps* each paying a third of the annual rent. About ten or eleven years ago, a part of the premises occupied as a separate dwelling by *John Phelps* having fallen into decay, *John Phelps* went away, and from that time the pauper had possession of that part, and paid two thirds of the rent. And under these circumstances he continued to occupy until the last of the three lives dropped in 1823, when the lease determined. Since 1823 he has continued in possession of the same premises by permission of the landlord, paying the same annual rent. The pauper, during the whole time of his occupation, repaired the part of the premises occupied by him, and once before the death of his father-in-law paid the highway-rate. *William Phelps* died intestate. No letters of administration were ever taken out. Nothing in writing passed between *William Phelps* and the pauper. The question for the opinion of this Court was, Whether by possession for more than twenty years the pauper had not such an estate in

the premises as gave him a settlement in *Bere Regis*?—BAYLEY J. In order to acquire a settlement in *Bere Regis*, the pauper must have had an estate, but neither he nor his wife had any estate. The father of the wife, *William Phelps*, had an estate for ninety-nine years, determinable on three lives. Upon his death, that estate, being a chattel interest, would pass to his personal representative. Nothing was done to vest it in the pauper or his wife. No letters of administration were taken out by them. The estate would not vest in the widow, or in any of the next of kin, until letters of administration had been granted, and it belonged to the ordinary, according to his discretion to grant administration to the widow or any of the next of kin. In *Rex v. Cold Ashton* (a) it was said, that some agreement ought to be presumed between the pauper and the other next of kin; but I think we are not at liberty to make any such presumption in this case. *Rex v. Canford Magna* (b) bears upon this case in all its points. There the father of the pauper went to live in the house of *John White* in *Corfe Mullen*, and married *White's* daughter. The house was held by *White*, determinable on a lease for ninety-nine years (as in this case). *White* died, leaving a widow, and *Thomas* and *Ann*, his only children, surviving him. It did not appear that letters of administration were taken out. The widow, the father of the pauper and his wife, were all living in *White's* house at the time of his death, and continued to live there afterwards; the widow until her decease, about six years before the order of removal was made, and the father of the pauper and his wife down to that time, they being, after her decease, in the sole occupation. The occupation was by the widow, and the father of the pauper and his wife, about thirty years altogether. It was insisted that the Court might presume that the father of the pauper and his wife had agreed with the other parties interested for their shares; but the Court were of opinion that no such presumption could be drawn. I think that case is not distinguishable from the present, and, consequently, that the pauper did not gain any settlement by estate, and that the order of sessions is right.—LITLEDALE J. I am of the same opinion. It appears that *W. Phelps* died possessed of an estate for ninety-nine years, determinable on three lives, and letters of administration might have been granted to the widow or any of the next of kin, but they never were granted. The actual property in the leasehold estate would not, after the death of *W. Phelps*, vest in the widow or any of the next of kin till administration. But then, it is said, that the pauper gained an estate by adverse possession. It appeared that he married the daughter of *W. Phelps*, and during his life resided on a part of the premises; that *Phelps* died in 1791; that the pauper and his wife, and two of his wife's brothers, then occupied the property, the pauper and his wife taking a third. Three out of the four children of *W. Phelps*, after his death, therefore continued in possession of part of the estate till one of them quitted the portion occupied by him, and then the other two (one being the wife of the pauper) had possession of that part, and the pauper afterwards paid two thirds of the rent. The lease expired in 1823. There was nothing like adverse possession. Against whom could it be adverse? Only against the widow and the other sons. But neither of them had any legal

pear that letters of administration had been taken out after the death of *W. P.*: Held, that *W. B.* did not by such residence gain a settlement.

(a) *Burr. S. C.* 444. 2 *Bott*, pl. 617.

(b) 6 *M. & S.* 355. *Ante*, pl. 166.

interest in the property, and the possession, to confer a right, must be adverse against a person having title.—*PARKE J.* This case is not distinguishable from *Rex v. Canford Magna*. In *Rex v. Cold Ashton*, there was an exclusive possession by the pauper and his wife after the death of the father. But here, after the death of *W. Phelps*, there was no such exclusive possession by the pauper and his wife. The leasehold premises were occupied by them jointly with others, each of the occupiers paying an equal proportion of rent. In *Rex v. Canford Magna* the widow, the pauper and his wife, and after the death of the widow, the pauper and his wife, lived on the property, to the exclusion of others, but it was there held, that there had been no exclusive possession on which a right could be founded. Here the pauper's occupation at first was a tenancy at will. After the death of the intestate, there was no person against whom there could be any adverse possession. As to drawing presumption of any agreement, there is nothing to presume, because before there could be any legal title to convey, letters of administration must have been granted.—Order of sessions confirmed.

175. *Rex v. Piddlehinton*, *E. T. 2 W. 4.*—3 *B. & Ad.* 460.—*Ante pl.* 164.

A father, in consideration of natural affection and of 24*l.* which he owed his son, made over to him premises in the parish of *S.* by verbal agreement only, and the son received the rents for three years residing in *S.*: Held, that the son was a purchaser for less than 30*l.* within 9 *G. 1. c. 7. s. 5.* and gained no settlement.

A. being in possession of a copyhold estate of inheritance, offered to give it up to his son and heir, if he would pay off 15*l.* which he, *A.* had borrowed; on the estate, and would permit *A.* and his wife to reside it rent free during their lives. The son paid off the 15*l.* and was admitted to the copyhold estate upon the surrender of his father. The admittance recited the verbal agreement between *A.* and his son, and the payment of the 15*l.* *A.* and

176. *Rex v. Hatfield Broad Oak*, *E. T. 2 W. 4.*—3 *B. & Ad.* 566.—Upon appeal against an order of two justices, whereby *John Greygoose*, his wife and children, were removed from the parish of *Takeley*, in the county of *Essex*, to the parish of *Hatfield Broad Oak*, in the same county, the sessions confirmed the order, subject to the opinion of this Court on the following case:—The pauper had gained a settlement by hiring and service in *Hatfield Broad Oak*, but he afterwards returned to and lived with his father, who was then in possession of a copyhold estate and premises of inheritance in the respondent parish *Takeley*, to which estate he had been admitted on the death of his father, as heir at law, in 1757. After the pauper's return, and about twenty-four years ago, the pauper's father told the pauper that he would give up the estate and premises to him, as they would be his afterwards by heirship, if he would pay off a debt of 15*l.* which he the father had borrowed upon them, and if he would permit him (the father) and his wife (the pauper's mother) to reside upon them rent free during the rest of their lives. The pauper paid off the sum of 15*l.* for the purpose of relieving his father from that debt, and was duly admitted to the estate and premises upon surrender of his father. The father and mother continued to reside upon the premises; the father till his death, the mother till the time of the removal; and the pauper did so for eighteen years after his admittance, and gained no subsequent settlement. The admittance of the pauper on the surrender of his father (in 1807) contained no statement of any consideration except the verbal agreement between the pauper and his father, and the payment of the 15*l.* by the pauper. The sessions

his wife continued afterwards to reside on the estate with their son: Held, that from the terms of the conveyance, and the state of the family, natural love and affection must be taken to have formed an ingredient in the consideration, and, therefore, this was not the purchase of an estate or interest whereof the consideration did not amount to 30*l.*, within the 9 *G. 1. c. 7. s. 5.*

in confirming the order, stated their opinion to be, that this was a purchase of an estate for less than 30*l.* the only apparent consideration being the payment of the 15*l.* by the pauper on his father's account, which payment originated in the want of the father; and therefore no settlement was gained under the 9 G. 1. c. 7.—Lord TENTERDEN C. J. I think the sessions have not come to the right conclusion. From the terms of the conveyance and the state of the family at the time, I think that natural love and affection must certainly be taken to have formed an ingredient in the consideration; and if so, this was not a pecuniary purchase for less than 30*l.* within the meaning of the statute.—LITLEDALE J. The 15*l.*, the debt charged on the estate, was not the only consideration for this conveyance. This is clear from the agreement that the pauper should allow his father and mother to reside upon the premises rent free during the rest of their lives.—PARKE J. This was a conveyance of the property, in consideration of natural love and affection, and subject to a certain burthen. I think the sessions came to a wrong conclusion.—PATTESON J. concurred.—Order of sessions quashed (a).

177. *Rex v. Sherrington*, T. T. 2 W. 4.—3 B. & Ad. 714.—On an appeal against an order of two justices for the removal of *Mary Bailey* from the parish of *Olney* in the county of *Bucks.* to the parish *Sherrington* in the same county, the sessions confirmed the order, subject to the opinion of this Court on the following case:—*Sarah Whiting* by her will, duly executed and attested, dated the 9th of *October*, 1821, devised her real estate unto, and to the use of, her niece *Catherine Bailey*, the pauper's sister, her heirs and assigns, and appointed *John Bailey*, the father of *Catherine* and of the pauper, executor. The testatrix, at the time of the execution of her will, and thenceforward till her death, was seised in fee-simple of a real estate in the respondent parish, consisting of two cottages or tenements. On the testatrix's death, *Catherine* was in the sixteenth year of her age; and her father immediately took possession of the two tenements, considering himself her guardian, and resided in one of them for five or six years; both his daughters living with him, and forming part of his family during the whole of that time. He let the other cottage to a tenant, and applied the rent to his own use, considering it a compensation for the expense of bringing up his daughter *Catherine*. The pauper had gained no settlement in her own right. The question for the opinion of this Court was, whether *John Bailey* gained a settlement in the respondent parish, by residing under such circumstances on the tenement devised by *Sarah Whiting's* will.—Lord TENTERDEN C. J. The father of the pauper was not guardian in socage, because the land did not come to his daughter by descent, nor was she under fourteen years of age. Neither was he a guardian appointed by the parent of a child under the age of twenty-one years, pursuant to the stat. 12 Car. 2. c. 24. s. 8. who, as such, would be entitled to take the profits of the land. Then he was the only natural guardian, and had not, in that capacity, any title to a control over the land belonging to his child. To give a settlement there must be an interest in the land.—LITLEDALE J. In *Quadring v. Downs* (b) it was held, that there can be no wardship without a descent. The land, therefore, having come to the daughter by devise

A real estate was devised to C. B. who on the death of the testator was sixteen years old. Her father, considering himself her guardian, resided with her on the estate: Held, that, as the estate came to the daughter by devise and not by descent, and she was above fourteen years of age, the father was not a guardian in socage, but natural guardian only, and that, having as such, no interest in the land, he gained no settlement by residing on it.

(a) See *Tetley v. Tetley*, 4 Bing. 214.

(b) 2 Mod. 176.

and not by descent, the father was not guardian in socage. Nor was he a guardian appointed pursuant to the statute. He had, therefore no legal or beneficial interest in the land, and consequently gained no settlement by residing on it.—PARKER J. The father here was only the *natural* guardian; and it is clear that, as such, he had no interest in the land, for that guardianship extends no further than the custody of the infant's person, *Hargrave's* note to *Co. Litt.* 88 b. note 66.—TAUNTON J. concurred.—Order of sessions confirmed.

A. enclosed an acre of land from a common, and built a house upon it, for which the parish gave him materials. Fourteen years after, he gave, by parol, part of the land so enclosed to B. who built a cottage on it, and afterwards enclosed a further portion of the common; and B. occupied the whole premises for about sixteen years. The copyholders (who were accustomed every seven years to break down the fences of encroachments on the common) twice broke down the fences between the common and the new land thus enclosed by B. (the fence between the new and the old enclosure having been previously removed,) and passed over that part of the land which had been newly enclosed by B.: Held, that B. gained a settlement by estate.

178. *Rex v. Pensax*, T. T. 2 W. 4. — 10 B. & C. 815.—Upon an appeal against an order of two justices, whereby *Mary Radford*, widow, and her children, were removed from the chapelry of *Pensax* to the parish of *Martley*, both in the county of *Worcester*, the sessions quashed the order, subject to the opinion of this Court on the following case:—*Mary Radford* was the widow of *John Radford*, who was the illegitimate child of *Hannah Radford*. After his birth, *Hannah* married *William Yarnold*, and they resided *Pensax*, the child *John Radford* living with them. In the chapelry of *Pensax* there is much common or waste land, beneath which there is coal belonging to the lessees (under an old demise) of the Dean and Chapter of *Worcester*, who are the lords of the manor. *Yarnold* was often relieved by the officers of *Pensax*, and they furnished him with materials necessary for the erection of a cottage upon the common, which he accordingly erected, about thirty years ago, having for the purpose enclosed an acre of land of about 10*l.* in value. Sixteen years ago he gave part of the land which he had so enclosed to *John Radford*, upon his marriage with the pauper *Mary*, and *Radford* then built a cottage upon it. No deed was made between them. After *John Radford* had taken possession of the cottage and land, he enclosed a small piece of land immediately adjoining (about 5*l.* in value), from the common, and the whole was afterwards thrown together by him. The copyholders (who are accustomed to break down the fences of encroachments once in seven years, to prevent persons enclosing from establishing a right) twice broke down the fences between the common and the new land thus enclosed by *John Radford*. The fences between the old and the new enclosure had been previously removed. The persons rode in at one side of the land, and out at the other side, but they did not pass over that part which had been given to *Radford* by *William Yarnold*. On one occasion, the lessees of the minerals under the dean and chapter sunk a coal-pit on the land last enclosed by *Radford*. The question for the opinion of this Court was, whether *John Radford* ever had such an estate in the land given to him by *William Yarnold*, or enclosed by himself from the waste, as would give him a settlement in *Pensax*.—Lord TENTERDEN C. J. We think this case is not distinguishable from *Rex v. Wooburn* (a), and the pauper's husband consequently gained a settlement by service in *P.* The order of settlement must, therefore, be confirmed.—Order of sessions confirmed.

(a) 10 B. & C. 846. Ante, pl. 173.

Of the Value of the Estate.—2 Bott, pl. 672.

179. *Rex v. Cottingham*, M. T. 8 G. 4.—7 B. & C. 603. —Upon an appeal against an order of two justices, whereby *W. Hardy* junior and his wife were removed from the township of *Bishop Burton*, in the East Riding of the county of *York*, to the township of *Cottingham*, in the said riding; the sessions confirmed the order, subject to the opinion of this Court on the following case:—The pauper, *W. Hardy*, had occupied no settlement in his own right, but followed that of *W. Hardy*, his father, and the only question at the sessions was, whether *Cottingham* or *Bishop Burton* was the last place of settlement of the father. It was admitted that the father had acquired a settlement in *Cottingham*, but it was insisted that he had afterwards acquired a settlement in *Bishop Burton* by the purchase of a cottage situate in that parish. In 1813 the father agreed with one *Page* (who then resided at *Feversham* in *Kent*.) for the purchase of a copyhold cottage situate at *Bishop Burton*. It was agreed that *Hardy*, the father, should pay 22*l.*, and all the expences attending the sale. Upon these terms the purchase was made. On the 22nd July 1813 the cottage was surrendered to the father; in the year 1814 he was duly admitted according to the custom of the manor, and he has ever since continued to reside in it. The amount paid by the father relative to this purchase was as follows: To *E. Page* 22*l.*, the purchase money; a fine to the lord of the manor 3*l.* 10*s.*; 1*l.* 13*s.* to the steward for his admission copy; 3*l.* 6*s.* to his (*Hardy's*) attorney for instructions for surrender of the cottage from *Page* and his mother; 1*l.* 1*s.* for drawing and engrossing power of attorney from the steward of the manor of *Bishop Burton* to one *Tappenden*, to take *Page's* surrender; 13*s.* 6*d.* for drawing and engrossing surrender; and other fees, amounting in the whole to 33*l.* 15*s.* 6*d.* The question for the opinion of this Court was, Whether *Hardy*, the father, gained a settlement in *Bishop Burton* by reason of this purchase of the cottage, and a residence therein of forty days?—BAYLEY J. This case admits of no doubt. The question is, What was, the consideration for the purchase bona fide paid, within the meaning of the act of parliament? I think that the sum given to the seller for selling his interest in the land, and to other persons whose concurrence was necessary to make the sale valid and effectual, was the consideration for the purchase. The fine paid to the lord, and the fees paid to the steward, in my opinion, form part of that consideration. But the sums paid to the vendor, the lord, and the steward, do not amount to 30*l.* The expences of the surrender paid by the purchaser to his own attorney, were no part of the consideration for the purchase. The cases cited are distinguishable from the present. In *Rex v. Scammonden* (a) the purchaser paid 30*l.*, for he paid the expences of levying a fine which it was necessary for the seller to levy in order to complete the title, and which he ought to have paid for if the purchaser had not agreed to pay. In *St. Paul's Walden v. Kempton* (b), 30*l.* was paid, including the fine to the lord, and the fee to the steward.—LITLEDALE J. I think the consideration for the purchase was the sums paid to the purchaser, and to the lord.

The sum paid by the purchaser of a copyhold estate his attorney for the surrender, is no part of the consideration for the purchase with the meaning of the stat. 9 G. c. 7. s. 5.

(a) 3 T. R. 474. 2 Bott, pl. 670.

(b) 2 Bott, pl. 664

The lord has an interest in the land, and the fine may be considered as paid to him for the purchase of part of his interest in it. I doubt whether the fee to the steward can be considered as part of the consideration for the purchase. The steward has no interest in the land. But it is unnecessary to decide that, because the money paid to the seller, the lord, and the steward, does not amount to 30*l*.—Order of sessions confirmed.

Appellants against an order of removal, proved that *J. J.*, the father of the pauper's wife, being seised in fee of land, and having several children, it was in his lifetime agreed between them that part of the land should be allotted to each child in pursuance of which agreement, on the marriage of the pauper in 1808, a portion of the land was allotted to him, upon which he built a house, and resided in it for sixteen years, and then sold the whole for 60*l*. to a party who held it ever since. The respondents then produced a conveyance to the pauper of the land in question in 1815 by *S. J.*, the eldest son and heir at law of *J. J.* It recited, that the pauper had agreed to purchase the above parcel of land of *S. J.*, and had paid him two guineas for the same, but no conveyance thereof had yet been made; and then expressed, that in consideration of that sum, *S. J.* bargained and sold, &c.:

180. *Rex v. Cheadle*, *T. T.* 2 *W.* 4.—3 *B. & Ad.* 833.—On appeal against an order of two justices, whereby *William Smith* and his wife and children, were removed from the parish of *Cheadle*, in the county of *Stafford*, to the township of *Scropton* and *Foston*, in the county of *Derby*, the sessions quashed the order, subject to the opinion of this Court on the following case:—The settlement of the pauper, *W. Smith*, at the time of his marriage in 1808, was in the appellant township of *Scropton* and *Foston*. The appellants, in order to establish a subsequent settlement by estate in *Cheadle*, the respondent parish, proved that *John James*, the father of the pauper's wife, had been seised in fee of a house and some land in *Cheadle*, on which he resided with his family (a wife and five children), and of which he continued in possession till 1807, when he died intestate, leaving his eldest son *Simon James* his heir at law. It had been agreed in the lifetime of *John James*, by all the members of the family, including *Simon James*, that the four younger children (of whom the pauper's wife was one), should have a parcel of the said land allotted to each of them, in order that they might build houses thereon respectively, when they could raise the money. In pursuance of this agreement, a portion of the land was staked out for the pauper to build on a short time after his marriage, and he built a cottage thereon upwards of twenty-one years since, in which he resided sixteen or seventeen years, and then sold it for 60*l*. to one *John Higgs*, who still has it. The land so staked out was a small plot about four yards by six or seven, and the full value of it in fee before the cottage was built was two guineas or two guineas and a half. When the cottage was built, *Simon James* (the eldest son of *John*), who lived within a few yards, assisted the pauper in staking out the land, and in doing some of the work at the foundation. On the part of the respondents, indentures of lease and release of the 6th and 7th of *January* 1815 were produced and proved, for the purpose of shewing that this land had been purchased by the pauper for a money consideration not amounting to 30*l*. The release was between *Simon James* (therein described as eldest son and heir at law of *John James* deceased) of the first part, *William Smith*, the pauper, of the second part, and *John Moreton* (therein described as a trustee nominated by and on behalf of the said *William Smith*) of the third part; and after reciting, that "the said *William Smith* some time since agreed to purchase from the said *Simon James* the plot or parcel of land therein after mentioned, and had paid the said *Simon James* the sum of "2*l*. 2*s*. as consideration for the same, and lately erected a dwelling-

Held, that the appellants were not estopped by the recital of this deed from giving parol evidence that the consideration stated in the deed was never paid or intended to be paid, and that the deed was made for the purpose of confirming the pauper's title to the land allotted to him in virtue of the above-mentioned parol agreement.

“house thereon, but no conveyance thereof had yet been made,” it was witnessed, that for and in consideration of 2*l.* 2*s.* to the said *Simon James* in hand paid by the said *William Smith* at or before the sealing and delivery of these presents, the receipt whereof *Simon James* did thereby acknowledge, and thereof did acquit and for ever discharge the said *William Smith*, his heirs, &c. ; he the said *Simon James* did grant, bargain, &c. the said plot of land, and the said house erected thereon, to the pauper, his heirs and assigns, &c. Each of these deeds was stamped with a 15*s.* stamp. The evidence of the pauper, and also of one *Jeremiah Robinson* (who was not a party to the deed), was then tendered on the part of the appellants, and objected to on the other side, but received by the Court, to shew that the consideration stated in the deed was not paid, nor intended by the parties to be paid ; and that the deed was only made for the purpose of confirming the pauper’s title to the plot of land which had been allotted to him shortly after his marriage, under the parol arrangement between *John James* and his children. The sessions found that the consideration mentioned in the deed was not paid, nor intended to be paid. The questions for the opinion of this Court were, 1st, whether the last mentioned evidence was properly admitted ? and if it was, then, 2dly, whether, on all the facts of the case, the pauper acquired a settlement in the respondent parish ?—Lord TENTERDEN C. J. I think a settlement was gained in *Cheadle*. The appellants proved that *John James*, the father of the pauper’s wife, being seised in fee of a house and land in *Cheadle*, and having several children, it was agreed among them in his lifetime that a part of the land should be allotted to each of them. One of the children married the pauper in 1808, and, soon after, in pursuance of the agreement, a portion of the land was staked out, upon which the pauper built a house, and after residing there seventeen years, he sold the house for 60*l.* There having been twenty years’ possession, the case thus far shewed such an estate as gave the pauper a settlement. To avoid this settlement by estate, the parish officers of *Cheadle* proposed to shew, by the deed of 1815, that the pauper’s title to it accrued by a purchase for a money consideration not amounting to 30*l.* That deed recited, that *Smith* had agreed to purchase the land for the consideration of two guineas. The other parish alleged in answer that the recital was not true, and that the real consideration was not a money consideration ; and they gave evidence that the two guineas were not paid, or intended to be paid, and that the only object of the parties in executing this deed was to confirm the pauper’s title. The objection is, that evidence to contradict the statement of the consideration in the deed ought not to have been admitted. Now, the parties to the deed might be estopped by it from saying that this was not a purchase for a money consideration ; but the parish officers, who are strangers to it, are not. If that were otherwise, the greatest inconvenience and injustice might arise, because a settlement might be acquired or not according to the language used by parties in an instrument of this nature. The evidence was, in my opinion, properly received, as shewing, not that the deed was void, but that this was not a purchase for a money consideration.—LITLEDALE J. concurred.—PARKE J. It is quite clear, that although the parties to this deed were estopped by it, strangers were not, and, consequently, the parish officers might shew the real nature of the transaction. If

this were not so, parishes might be burthened with settlements for which there was no colour. It is clear that a settlement was gained in this case by an estate voluntarily conveyed to the pauper.—TAUNTON J. concurred.—Order of sessions confirmed.

Of Certificated Persons.—2 Bott, pl. 688.

A man living in parish A. under a certificate from parish B. cannot gain a settlement in the former parish by purchasing an estate for money.

181. *Rex v. Great Driffield, M. T. 9 G. 4.*—8 B. & C. 684.—Upon an appeal against an order of two justices, whereby *T. Harrison*, his wife and children, were removed from the township of *Great Driffield*, in the East Riding of the county of *York*, to the township of *Garton* on the *Wolds* in the same Riding, the sessions quashed the order, subject to the opinion of this Court on the following case:—The pauper, *T. Harrison*, never acquired any settlement in his own right. The pauper's grandfather resided at *Garton*; his son (the pauper's father), whilst living with him at *Garton*, was bound an apprentice to one *Lyon* a shoemaker, who was then residing at *Great Driffield*, under a regular certificate from the parish of *Kirkburn*, as the pauper then knew. The indenture, which was in the usual form, and regularly stamped and executed by all parties, was dated the 25th day of *March*, 1786, and stated that the apprentice was thereby bound for the term of seven years, from (a blank being left in that part of the indenture for the time from which the apprentice was so bound.) The apprentice served his master from the date of the indenture, until about five weeks previously to the expiration of the seven years in *Great Driffield*. *Lyon* had resided in *Great Driffield* from the year 1771 to the time of executing the indenture, and from thence until his death in 1793; but he, on or about the 10th of *May*, 1792, whilst the apprentice was so serving him in *Great Driffield*, purchased a cottage in *Great Driffield* for the sum of 110*l.*, of which 30*l.* was paid by him, and the remaining sum of 80*l.* was paid by one *Elizabeth Day*. And the same was thereupon duly conveyed by an indenture of feoffment, with livery of seisin indorsed, bearing date the 10th of *May*, 1792, unto *Lyon* and his heirs, to the use of *Elizabeth Day*, her executors, administrators, and assigns, from the day next before the date thereof for the term of 500 years, subject to a proviso therein after contained for redemption of the said premises, with remainder to the use of the said *R. Lyon*, his heirs, and assigns for ever. The said indenture also contained a proviso for making void the said term on payment by *Lyon*, his heirs, executors, administrators, and assigns, unto *E. Day*, her executors, &c. of the sum of 80*l.* with interest for the same, on the 10th of *November* then next, and *Lyon* occupied the cottage until his death. The apprentice served *Lyon* in *Great Driffield* for more than forty days after *Lyon* had purchased the cottage, and then resided with *Lyon*. The father of the pauper did no other act to gain a settlement; and if by the apprenticeship and service he gained no settlement in *Great Driffield*, the place of his and the pauper's last legal settlement is *Garton*, where the pauper's grandfather was legally settled. The question for the opinion of this Court was, Whether, under the circumstances above set forth, the father of the pauper gained a settlement in *Great Driffield*, by being bound to and serving the said *R. Lyon* as aforesaid?—BAYLEY J. now delivered the judgment of the Court:

The question for our consideration is, Whether the pauper's father gained a settlement in the township of *Great Driffield* by serving as an apprentice to a person who resided there under a certificate from another parish. In support of the order of sessions, it was contended that he did; because the certificate was discharged by the master's having acquired a settlement in *Great Driffield*, by the purchase mentioned in the case; and if so, it was argued, that the subsequent service to the master, after he ceased to reside under the certificate, though by virtue of a binding made to him whilst he was so residing, was sufficient to confer a settlement on the apprentice. It is unnecessary to decide the latter question, if no settlement was gained by the master, by the purchase which he made; and we are of opinion that no settlement was gained. The statute 9 & 10 W. 3. c. 11., after reciting the 8 & 9 W. 3. c. 30. (the certificate act), and also reciting that some doubts have arisen upon the construction of the said act, by what acts any person coming to inhabit and reside within any parish, by virtue of any such certificate, may procure a legal settlement in such parish, enacts, "that no person or persons " whatsoever, who shall come into any parish by such certificate as " aforesaid, shall be adjudged, *by any act whatsoever*, to have procured a legal settlement in such parish, unless he or they shall " really and bonâ fide take a lease of a tenement of the value of " 10*l.*, or shall execute some annual office in such parish, being " legally placed in such office." By the express words of this statute no settlement can be obtained by the certificated pauper, by any act whatsoever; that is, as the context shews, by any act whatsoever done by the pauper, other than the two which are pointed out by the act. The purchase by the pauper of an estate, for a sum of money, is an act done by him other than those mentioned in the statute; and, according to the plain and ordinary import of its words, he cannot procure by it a settlement in the parish. But we are bound to construe every statute according to the plain and ordinary import of its words, and to act upon that construction, unless we should find ourselves bound by an uniform course of well-considered decisions, giving a different effect to the provisions of the statute; or unless that construction would lead to such consequences, that we can safely pronounce that the legislature must have had a different intention from that which the ordinary import of the words conveys. It will be found, however, upon referring to the several decisions, that they are few, and that they are founded in some degree upon a mistaken supposition that the point properly arose and was decided in the first reported case upon this subject. That case was between the parishes of *Burclear* and *Eastwoodhey* (a), in which it was held, that where a certificated pauper acquired an estate, in right of his wife, which was surrendered to her by her father, his certificate was discharged, and he gained a settlement; and it is stated in the judgment that he did not come in *by an act of his own*, but that the estate was cast upon him by act and operation of law. Other reasons are, it is true, assigned in the judgment of the Court, but it may be supported upon that ground; for a settlement acquired by operation of law, is not acquired by any act of the pauper, and is, therefore, not

(a) 1 Str. 163. Burr. S. C. 221. 2 Bott, pl. 681.

prohibited by the statute 9 & 10 W. 3. In that case, one *Hackett* lived in the parish of *Eastwoodhey*, with a certificate from *Burclear*; his wife's father surrendered to her use a copyhold in *Eastwoodhey*, upon which they resided five years, and then the wife died. The husband afterwards asked relief in *Eastwoodhey*, from which he was removed to *Burclear*; and the question was, Whether his residence upon this copyhold gave him a settlement in *Eastwoodhey*? and, per Curiam, "The 9 & 10 W. 3. is not explanatory, but new; and, therefore, to receive a liberal construction. The exceptions in the statute prove this case more reasonable than either of those mentioned. If a certificate-man, by taking a tenement of 10*l.* a year, gain a settlement, à fortiori, shall he, who has an estate of his own, especially in this case, *where he does not come to it by his own act*, which might savour of fraud, but it is cast upon him by the act and operation of law? If he who serves a parish office gains a settlement by reason of his presumed ability, with greater reason shall he who has ability of his own visible to all the world. It has been adjudged that any other person, by the descent or purchase of a freehold or copyhold, or by becoming entitled to a lease for years, gains a settlement; and it cannot be supposed the legislature intended to put a certificate-man in a worse condition." The Court, therefore, seemed to think that a certificated man might gain a settlement by estate coming to him by purchase. But that was not a case of purchase; and where an act of parliament says, in distinct terms, that a certificated man shall gain a settlement in two modes only, we are not at liberty to say he may gain it by any other. There the estate came to the pauper, not by his own act, but by act and operation of law — by voluntary surrender of the copyhold to his wife. That case occurred before the 9 G. 1. At that period a party might gain a settlement by the purchase of an estate of any amount. The next case was *Ivinghoe v. Stonebridge* (a). This case decided that an apprentice to a certificated man gained a settlement in the year 1709, because it was prior to the statute 12 Anne, prohibiting such apprentices from gaining a settlement. The opinion of the Court that the purchase of an estate made the certificate-man a settled inhabitant, was expressly founded on the decision in the former case of *Burclear v. Eastwoodhey*, and was, also, extra-judicial. These two cases are not of sufficient weight to induce us to say, in the teeth of the words of the act of parliament, that a settlement may be gained by purchase, which is an act done. — I come now to cases where the estates have been acquired by purchase for money. The first case of a purchase for money by a certificated man is the *King v. Stansfield* (b), where a purchase by the pauper, for 47*l.* paid by him, of a leasehold estate in the certificated township, was held to gain him a settlement. It is material to look at the language used by the Court in their judgment. Lord C. J. Lee says, "I do not know that the 9 & 10 W. 3. has been taken so strictly as the counsel would suppose. A descent or devise, and, 'I believe, a purchase too, has been determined to gain a settlement after forty days' residence upon the foot of a person not being removable from his own, and as not being an intruder within the meaning of the 13 and 14 Car. 2. c. 12.; so that, whenever a man has an interest of his own, though under 20*l.* a year, he shall not be re-

(a) 1 Str. 265. 2 Bott, pl. 682.

(b) Burr. S. C. 205. 2 Bott, pl. 683.

"movable by that statute. The present question turns, indeed, upon "the construction of the certificate act. Now, though this person "was a certificate man, yet, if he had come to this by *act of law*, "it would have gained him a settlement; and, I *believe*, it has been "so determined in cases of purchases too. I think the same con- "struction has been made upon this act as upon that of the 13 & 14 "Car. 2." In the following term, in the case of *Rex v. The Inhabitants of Deddington*, (a) it was decided, that a purchase by the cer- tificated man for the sum of 42*l.* gained a settlement, expressly upon the authority of *Burclear v. Eastwoodhey*. Lord C. J. *Lee* says; that, in that case, the purchase was most plainly neither of the two cases mentioned in the act; and he observes, that a purchase was a matter of as much notoriety or more than the renting of a tenement of 10*l.* a year; that the construction ought to be agreeable to that which has been put on the 13 & 14 Car. 2. c. 12, under which any man is irremovable from a tenement of his own, and that if the con- struction were different, a person could not gain a settlement by a purchase of 5000*l.* per annum. In *Rex v. Cold Ashton* (b) *D. Harrison* and wife lived in *Cold Ashton* under a certificate from *Woodchester*. The wife's father died intestate, leaving a leasehold for ninety-nine years in *Cold Ashton*, determinable on lives. *D. Har- rison* and wife lived upon it twenty-nine years. *It came to the hus- band, not by his own act, but by act of law*. Lord *Mansfield* said, "The question is, Whether he is within the 9 & 10 W. 3. which men- "tions only two methods whereby certificated persons can gain settle- "ments? But an estate of a man's own, from which he cannot be re- "moved, has been by construction (and a reasonable one too,) held "not to be within the act, for it would be hard to remove a man from "his own. The principle of the determination is, because property of "a man's own is a stronger case than hiring another person's of 10*l.* a "year value." It should be remembered, however, that although a man may not be removable from his own, it does not follow that he will gain a settlement by residing on it. In *Rex v. Long Wittenham*, (c), *J. Westal* was certified in *Upton*; he bought a cottage for 5*l.* lived in it nineteen years, and died. His widow *Jane* lived on it ten weeks after his death, and the question was, whether she thereby gained a settlement. Lord *Mansfield* C. J. "Magna charta says that a "widow shall have her forty days; and, therefore, there is no doubt "she was irremovable for forty days, and thereby gained a settlement." The estate in that case came to the pauper by her husband's death. In *Rex v. Warblington* (d) the pauper's father lived under a certi- ficate in *Warblington*. The lord of the manor of *Havant* had granted him a part of the waste, and he built a house upon it, and lived in it. It appeared that there had been a usage for the lord of the manor to grant parcels of the waste for small pecuniary considerations, and that the pauper was admitted upon payment of 1*s.* fine, 1*s.* heriot, and 1*s.* quit-rent. It was insisted that this grant was voluntary, and vacated the certificate. But the Court decided, that such a grant of a copyhold, with 1*s.* fine and 1*s.* heriot, was a purchase within the 9 G. 1. c. 7. s. 5. I mention the case to shew what was the impres- sion on the minds of *Ashhurst* and *Buller* Js. as to the construction of

(a) *Burr. S. C.* 220. 2 *Bott*, pl. 684. (b) *Burr. S. C.* 444. 2 *Bott*, pl. 685.
(c) 2 *Bott*, pl. 686. (d) 1 *T. R.* 241. 2 *Bott*, pl. 687.

the statute 8 & 9 W. 3. *Ashhurst J.* says, "If it were necessary to give any opinion upon the point, whether, supposing this to be a voluntary grant, the party would gain a settlement, I should have wished the matter to have undergone further discussion. It seems extraordinary that, in the teeth of an act of parliament, this matter should have been taken for granted; nothing can be stronger than the words of the certificate act (which he then recites). It is singular that a practice should have prevailed in opposition to this act of parliament, when the words are so strong." *Buller J.* says, "I reserve to myself the consideration of the question, what effect a voluntary gift would have on a certificate person as to the giving of a settlement. I agree, that, under the act of the 9 G. 1. c. 7. s. 5., the word 'purchase' has not the same extensive sense as is generally annexed to it. But no case has been cited at the bar, where a certificate has been discharged by a voluntary gift." These two learned Judges must have been satisfied that there was a material distinction between a case, where the estate was obtained by purchase, and where it was obtained by voluntary gift. We do not feel ourselves bound by these decisions to put a construction upon the statute at variance with the plain and ordinary meaning of its words. It is clear that these decisions have proceeded in part upon a misapprehension of the precise point decided in the case of *Burclear v. Eastwoodhey*. The other reasons assigned in giving these judgments do not appear to us satisfactory; the thing seems to us to turn upon the notoriety of the purchase. There is no question whether the certificated man would be removable during the time of his living in the parish, and being the proprietor of an estate, but whether he acquired a settlement; and with respect to the similarity of construction to be put upon this statute, as on the 13 & 14 Car. 2., it is to be observed that the words are very different, and that, looking at the recital in the latter statute, which applies to poor persons going from one parish to another, and endeavouring to settle themselves where there is the best stock, and at the enactment which authorizes the removal of *such* persons only as are mentioned in the recital, it is clear that it never meant to apply to persons who had estates in the parish in which they came to settle. We think, also, that no mischief will follow from the construction we put on the statute of 9 & 10 W. 3., for though, on the one hand, according to that construction, a certificated man would gain no settlement by purchase of a large estate; on the other, he would be disabled from burthening the certificated parish by making a purchase of an estate for a very small consideration, which he might have done prior to the 9 G. 1. c. 7. s. 5. The other cases of settlements acquired by certificated persons, may be supported on the ground that the estate came by operation of law, as in *Rex v. Cold Ashton*, or by voluntary conveyance from another, as in *Rex v. Ufton (a)*, which may, perhaps, be considered as an estate not acquired by any act done by the party. We are, therefore, of opinion, that the statute 9 & 10 W. 3. prevents any settlement, by reason of an estate acquired by the act of the pauper, by a purchase in the ordinary and usual sense of that word; but it does not prevent the acquisition of a settlement by reason of an estate devolving on the pauper by operation of law, or acquired by

(a) 3 T. R. 251. 2 Bott, pl 688.

purchase, in the technical sense of that word.—Order of sessions quashed.

182. *Rex v. Cassington, M. T. 2 W. 4.—2 B. & Ad. 874.*—Upon appeal against an order of two justices, whereby *William Whitley*, his wife and children, were removed from the parish of *Handborough*, in the county of *Oxford*, to the parish of *Cassington*, in the same county; the sessions confirmed the order, subject to the opinion of this Court on the following case:—*Robert Whitley*, the pauper's father, about sixty years ago, went to the parish of *Handborough*, with a certificate, duly signed, certified, and allowed, acknowledging that he, his wife and family were legally settled at *Cassington*. In 1771, *Thomas Whitley*, father of the said *Robert*, duly made his last will in writing, and thereby devised as follows:—“I give and bequeath to my son, *Robert Whitley*, the sum of 5*l.*, “and my desire is, that my son *Robert* shall live in that part of my “house as he now doth, and at the same yearly rent which he now “gives, as long as my son *John* shall enjoy or own the same. And “all other my estate and stock whatsoever I stand possessed of at “the time of my decease, I give to my beloved son *John Whitley*, “and his heirs for ever.” It appeared by the Court Rolls of the manor of *Handborough*, that, on the 18th of *October 1772*, *John Whitley*, as son and devisee of *Thomas Whitley*, was duly admitted tenant to the house mentioned in his father's will. It further appeared, from the same Court Roll, that on the 25th of *October 1773*, the said *John Whitley*, surrendered the house to the use and behoof of *Robert Whitley* of *Handborough* and his heirs for ever: and at the same court *Robert Whitley* did his fealty and was admitted tenant. It appeared also that in the year 1773, it was not usual to state on the Court Rolls the considerations, whether valuable or otherwise, which were given for property surrendered; but they were mentioned in the copies of the court rolls delivered out. The copy was not produced in evidence in this case. *Robert Whitley*, the pauper's father, resided in the house more than forty days previous to such surrender, and after his father's death and more than forty days after the surrender, and during this occupation the pauper was born.—LORD TENTERDEN C. J. It seems to me that, under the will, the pauper's father took an estate pur autre vie, that is, for *John's* life, defeasible on his ceasing to enjoy and own the estate. No one could say that *John* would so cease during the whole of his life; so long, therefore, as *John* lived, *Robert* might hold his estate. And it was conveyed to him by the will of his father, and not by his purchase, or any act of his own.—PARKER J. *Robert* took an estate for life, determinable on certain events. It is immaterial whether the estate be equitable or legal, the certificate is equally discharged. The case of *Rex v. Great Driffield (a)* leaves all the cases untouched where the consideration is any other than pecuniary. TAUNTON J. and PATTERSON J. concurred.—The rule for quashing the order of sessions was made absolute.

A. devised to his son, who had come into a parish with a certificate, an estate in these words: “My desire is, that my son *Robert* shall live in that part of my house as he now doth, and at the same yearly rent which he now gives, as long as my son *John*” (to whom the testator devised the house in fee), “shall enjoy and own the same.” Held, that this was a devise of an estate pur autre vie, which discharged the certificate.

Quære, Whether an estate conveyed to a certificated man on mere voluntary consideration, will discharge the certificate?

(a) 8 B. & C. 684.

OF CERTIFICATES.

Of the Form and Manner of granting Certificates.—2 Bott, pl. 727.

A parish certificate under the respective hands of two churchwardens and one overseer, but having only two seals, one being opposite to the names of the churchwardens, was held insufficient.

Where the parish was in two counties, an allowance by two justices of one county held sufficient.

183. *Rex v. Austrey*, E. T. 57 G. 3.—6 M. & S. 319.—The court of quarter sessions for the county of *Leicester* confirmed an order for the removal of *John Smith*, his wife and children, from *St. Margaret's, Leicester*, to *Austrey*, subject to the opinion of this Court upon the following case:—The respondents' *prima facie* case, by the birth of the pauper in *Austrey*, was admitted. In answer, the appellants put in a certificate, granted to *William Smith*, from the parish of *Appleby*, in the year 1768, of which the following is a copy:—"Derbyshire (to wit). We, *Joseph Saddington*, *James Parker*, and *John Bowley*, churchwardens and overseers of the parish of *Appleby*, in the county of *Leicester* and *Derby* aforesaid, do hereby own and acknowledge *William Smith*, and his wife *Phillis*, to be inhabitants legally settled in the parish of *Appleby* aforesaid; in witness whereof we have hereunto set our hands and seals, the 4th day of *April*, in the eighth year of the reign of our sovereign lord *George* the Third, by the grace of *God*, &c., and in the year of our Lord 1768. *Joseph Saddington*, *James Parker*, churchwardens, (L. s.)—*John Bowley*, overseer, (L. s.)—Witness, *Joseph Baker*, *James Tavener*, *Joseph Croshaw*.—The certificate is under the hands of *Saddington*, *Parker*, and *Bowley*; but there are only two seals, one opposite to the names of *Saddington* and *Parker*, styled churchwardens, the other opposite the name of *Bowley*, styled overseer. The certificate is allowed by two justices of *Derbyshire*. The parish of *Appleby* is situate partly in the county of *Derby*, and partly in the county of *Leicester*. After giving the certificate in evidence, the appellants called the pauper's brother, who proved that his father's name was *William Smith*, and that his father, while he resided in *Austrey*, received rent for eight or nine acres of land, and three houses in that part of *Appleby* which lies in the county of *Derby*. The father had been dead thirty years."—Lord ELLENBOROUGH C. J. delivered the judgment of the Court. In this case, an order of two justices for the removal of *John Smith*, *Elizabeth* his wife, and their five children, from the parish of *St. Margaret* in the borough of *Leicester*, to the parish or township of *Austrey*, in the county of *Warwick*, was confirmed by the order of the general quarter sessions of the peace for the county of *Leicester*, subject to the opinion of the Court upon a special case. The question now remaining for the opinion of the Court, arose upon a certificate duly attested and allowed by two justices, granted to *Wm. Smith*, purporting to be the certificate of *Joseph Saddington*, *James Parker*, and *John Bowley*, churchwardens and overseers of the poor of the parish of *Appleby*, owning and acknowledging *William Smith* and his wife *Phillis* to be inhabitants legally settled in the parish of *Appleby* aforesaid. In witness whereof (the certificate stated), we have hereunto set our hands and seals the 4th day of *April* 1768. This certificate, the case states, is under the hands of *Saddington*, *Parker*, and *Bowley*; but there are only two seals, one opposite the names of *Saddington* and *Parker*, styled churchwardens, and the other opposite the name of *Bowley*, styled

overseer. And the question now remaining to be decided is, Whether this is a good certificate within the stat. 8 & 9 W. 3. c. 30., so as to prevent *William Smith* from gaining a settlement in the parish of *Austrey*, whilst he resided there under that certificate, and where his son, the pauper, *John Smith* was, during that time, born. If it was not a good certificate within that statute, the order of sessions must be confirmed. The certificate required by the first section of that statute, is a certificate under the hands and seals of the churchwardens and overseers of the poor, or the major part of them; or under the hands and seals of the overseers of the poor, where there are no churchwardens. The certificate in question being a certificate by the two churchwardens and by one only of the overseers of the poor, and under two seals only, it was objected, that this is not a certificate under the hands and seals of the churchwardens and overseers of the poor, or the major part of them, within the meaning of the above statute. In answer to this objection, it was contended, that if several persons seal and deliver an instrument in writing, by putting their several seals upon one and the same piece of wax or wafer that is put upon the instrument, or using the same as their several seals, and delivering the instrument as their respective deeds, that the seal becomes the several seal of each, and that the instrument becomes the deed of all; and that this reasoning is applicable to the present case, as shewing that, in law, the seal opposite the names of the two churchwardens is to be considered as the distinct seal of each; and, therefore, that the certificate, testifying that the three had, in witness thereof, set their hands and seals thereto, and having been allowed by two justices, and the certificated person having been received under the same, was to be considered in law as being under the hands and seals of the three. In considering, however, how far the cases of deeds are applicable to cases like the present, it is to be recollected, that in those cases the parties only, by or under whose authority those deeds are executed, are bound by them. But cases like the present are cases of the execution of a power which bind and operate upon other persons at their peril, and subject them to indictments as for crimes, in case of their disobedience to the power, if it be duly executed. In the execution of powers, all the circumstances required by the creators of the power (however unessential, even, and unimportant otherwise,) must be observed, and can only be satisfied by a strict literal and precise performance. See *Hawkins v. Kemp*, 3 East, 440. It is also a general principle of law, wherever a power is given to any particular person to do any written act in any particular manner, or under certain particular circumstances, whether it be to parish officers or magistrates, to grant certificates under which, if duly executed, other persons, especially public officers, are bound to act, or to grant warrants, or make orders, that their authority must appear *upon the instrument itself*. It must thereby appear that they are the persons authorised, and that the certificate, warrant, or order, was made in the manner and under the circumstances required. Otherwise, the certificate, warrant, or order, is not obligatory, but void. The mere statement that the parties in witness hereof have put their hands and seals to such an instrument, does not make it so, unless it really have their hands and seals put to it; nor in the execution of a power has it, as it seems to us, their hands and seals to it, so as to make it a good execution of a power requiring such

execution to be under their hands and seals, unless it be apparent, upon the instrument itself, that it has the hand and seal of each put to it. The statute is to be construed in a case like this according to common parlance and understanding, and so as to be a security to persons who are bound to obey the powers given by it at their peril, and not to be construed according to what *may* be brought within its words by nice legal reasoning, applicable merely to deeds, and by which construction persons bound to obey the execution of the power, if it be duly granted, cannot ascertain whether it be so or not without delay, enquiry, expence, and trouble. In *Thaire v. Thaire*, *Palm.* 109. 112., where there was a submission to arbitration, "so that the award be delivered under their hands and seals," it was made a question, whether an award sealed, but not signed, was a good award: the point argued being, whether the sealing, which was virtually a signing, was sufficient; or whether the words of the submission should be intended in common parlance, an actual writing of their hands; the Judges of the Common Pleas being at first divided in opinion on that point. It was finally decided, however, by the whole Court, not that a virtual signing would do, but that there ought to be an actual signing under their hands. So where an act is to be under the hands and seals of the three, a mere virtual sealing by any of the three appears to us not sufficient, but that it ought to be under the actual distinct seal of each of the three, that is to say, under a distinct and several sealed impression adopted by each of the three. The necessity and importance of requiring this is more striking still in cases of warrants of imprisonment (where they are required to be under the hands and seals of two justices of the peace), where resistance and death might follow, and where the justification or high criminality of the officer, or of the party to be apprehended, would depend upon the uncertainty, and upon the subsequent establishment by extrinsic proof, whether the seal, if one sealed impression on the warrant would in any case do, was used so as to be considered as in law the seal of both or one. The consequence is, that we think the certificate is void, and that the order of sessions must be confirmed.

184. *Rex v. Whitchurch*, *M. T.* 8 G. 4.—7 B. & C. 573.—Upon appeal against an order of two justices, whereby they removed *W. Bray* the younger, his wife and children, from the parish of *Whitchurch*, in the county of *Southampton*, to the parish of *Saint Mary Bourne*, in the same county, the sessions quashed the order, subject to the opinion of this Court on the following case:—The following certificate was produced on the part of the parish of *Whitchurch*:—"Southampton to wit. We, *John Harbutt*, *William Piger*, *William Arundel*, *William Phillpott*, churchwardens and overseers of the poor of the parish of *Saint Mary Bourne*, in the county aforesaid, do hereby own and acknowledge *William Bray* junior, and sealed by two overseers, and by one churchwarden only. The churchwardens for the year 1758 were nominated at *Easter*, and were proved to have been sworn into office on the 15th of *September*, at the visitation. But there was no direct evidence of their having been sworn into office before that time. The certifying parish, after the date of the certificate, had frequently relieved the pauper and different members of his family while they were residing in other parishes: Held, that in favour of such an ancient certificate, which had been treated by the certifying parish as valid, the Court would presume that the churchwarden who executed the certificate was sworn before he executed it, and, therefore, that it was duly executed by him as churchwarden: Held, secondly, that the execution by two overseers and one churchwarden was an execution by the major part of the churchwardens and overseers within the statute 8 & 9 W. 3. c. 30.

A parish certificate, dated the 7th of September 1758, purported, in the body of it, to have been granted to a pauper and his family by two churchwardens and two overseers. It was signed and

" Elizabeth his wife, William, aged about five years, Mary, aged about three years, and Elizabeth, about two years, their children, to be our inhabitants, legally settled in the said parish of Saint Mary Bourne. In witness whereof, we have hereunto set our hands and seals this 7th day of September 1758." The instrument was signed by W. Piper, as one of the churchwardens, and by W. Arundel and W. Philpot, the two overseers, and attested by two witnesses, and was duly allowed by two justices on the 12th September 1758, who certified that Alexander Neave, one of the witnesses who attended the execution of the certificate, had made oath before them that he saw the churchwardens and overseers of the said parish, whose hands and seals were subscribed and set to the certificate, severally sign and seal the same, and the names of the said Alexander Neave and Thomas May, whose hands were subscribed as witnesses to the execution of the certificate, were of their own proper handwriting respectively. Richard Loft produced the certificate from the parish chest of Whitchurch, which was admitted as coming from the proper place. It was proved that William Bray junior, the grandfather of the pauper, resided in Whitchurch till the time of his death in 1799; that W. Bray, his son, also named in the certificate, has resided there ever since the certificate was granted; and that the pauper resided there from the time of his birth until the time of his removal under the order. It appeared by the visitation-books produced by the registrar of the bishop's court, that Saint Mary Bourne is in the diocese of Winchester, and is a peculiar in the jurisdiction of the Chancellor's visitation; that John Harbutt and William Piper were sworn churchwardens for Saint Mary Bourne in the year 1758, on the 15th September in that year; that no churchwardens appeared by the books to have been sworn in at the visitation from the year 1751 to 1758; that the visitation-book for 1750 was lost. It also appeared from the evidence of the registrar, that it was the course of office to make an entry in the visitation-books of the swearing in of churchwardens at the time of swearing, whether the swearing took place at the visitation or afterwards; that if it took place afterwards, the registrar always entered it, but he had not looked over the books before his time to see whether there were any entries of such subsequent swearing. It appeared that at Easter 1750, J. Longman was nominated as churchwarden; that in 1757, J. Cowdery and E. Rattin were nominated churchwardens, and that John Harbutt signed the nomination; and at Easter in 1758, Thomas Harbutt and W. Piper were nominated churchwardens. It appeared also that W. Bray, the pauper, was, on the 7th December 1790, bound by indenture to his grandfather W. Bray junior, named in the certificate, for the term of seven years, which time he served in Whitchurch; and that the pauper had done no act since the service under the apprenticeship to gain a settlement. It appeared that W. Bray (son of W. Bray junior, mentioned in the certificate), the father of the pauper, sixteen or seventeen years ago, received relief from the overseers of St. Mary Bourne, he at the time residing in Whitchurch; that he had also constantly, for the last four years, received relief from the last-mentioned parish; and that no objection was made upon his application to the overseers of that parish for relief when he requested it. It also appeared that W. Bray, the pauper, had been occasionally relieved by the parish

officers of *Bourne* nearly ever since his apprenticeship, whenever he wanted it, and had so received relief constantly for the last seven years. The court of quarter sessions thought the certificate inadequately executed, and quashed the order, subject to the opinion of this Court.—BAYLEY J. The question in this case is, Whether a certificate, granted nearly seventy years ago, is valid? By the instrument, four persons are described as churchwardens and overseers of the parish of *St. Mary Bourne*; but it appears, by the visitation books, that *Piper*, who signed the certificate as churchwarden, and *J. Harbutt*, who was described in it as the other churchwarden, were sworn in three days after the allowance of the certificate by the magistrates. It is contended, therefore, that as *Piper*, who signed the certificate, was not sworn into office at the time when it was executed, he was not churchwarden *de jure*, and that the certificate was not binding on the parish; and if that argument prevails, then, although a fraud was practised upon the churchwardens and overseers of *Whitchurch*, to whom the certificate was granted, it will be competent to the parish by whom the fraud was committed, by shewing that those persons were not then sworn into office, to vacate the certificate, and say that it is not binding on the parish of *St. Mary Bourne*. If we were to hold that at any distance of time a certificate might be impeached on such grounds, the consequence would be that no parish officer in future would be safe in taking a certificate. A man may, with the knowledge, and by the permission of the parish, act, in point of fact, as churchwarden, before he is sworn into office; he may, therefore, be churchwarden *de facto*, while some other person may be churchwarden *de jure*. Now it would operate as a great encouragement to a parish to induce a man so to act before he is sworn in, and thereby enable him to practise a fraud by granting certificates, if we were to hold the certificate in this case to be void. At present I am strongly inclined to think, that the fact of a churchwarden not having been sworn in until a period subsequent to the date of the certificate, is not of itself sufficient in any case to avoid the certificate. But in this case, the parish of *St. Mary Bourne*, who must have known under what circumstances the certificate was granted, have, from the year 1758 to the time when the order of removal was made, treated the certificate as valid; for they have, from time to time, relieved the pauper, and different members of his family, while they were residing in the parish of *Whitchurch*. As against the parish of *St. Mary Bourne*, therefore, I think we are warranted in favour of the validity of this certificate to presume any circumstances under which it may have been valid. Now an instance may be put, in which the certificate may, consistently with all the facts stated in the case, have been a valid certificate. Suppose *Piper*, soon after the nomination at *Easter* 1758, and before he did any act as churchwarden, to have gone to the commissary, and to have been sworn into office before him. The commissary might afterwards have required both the churchwardens to have been *re-sworn* at the time of the visitation, in order that the fact of their having been so sworn might appear in the books. If *Piper* alone was sworn into office before the visitation, he may have been the only churchwarden *de jure* at the time when the certificate was granted, and *Harbutt* may have declined to sign the certificate because he had not been sworn into office. I think it fair and reasonable to make this presumption against the certifying pa-

rish, who, by their certificate, held out to the parish officers of *Whitchurch* that *Piper* and *Harbutt* filled the office of churchwardens. Unless we make such a presumption in favour of the validity of this certificate, we must presume that the parish of *Saint Mary Bourne* contemplated a fraud upon the parish of *Whitchurch*; but we ought not to presume fraud. On the contrary, we ought to make every presumption in favour of the validity of that act. I think, therefore, we ought to presume that *Piper* alone had been sworn into office at the time when he executed the certificate; that he was consequently the only churchwarden de jure, and that the certificate was a good certificate. It therefore becomes unnecessary to decide the question, whether a certificate signed and sealed by a churchwarden de facto is valid.—LITLEDALE J. I think also that the certificate may be supported. Upon the question whether a churchwarden can lawfully do any act before he is actually sworn into office, I entertain some doubt. That matter was not fully discussed in the case cited from *Ventris*. It is, unnecessary, however, to decide that point, because here the certificate was granted nearly seventy years ago. Now sixty years bars a writ of right, and although the validity of certificates of that age may perhaps be enquired into, yet, after such a lapse of time, and after the certificate has been acted upon and treated by the certifying parish as valid, we ought, upon the principle upon which courts of law act in making presumptions, to intend that *Piper* was actually sworn in at the time when he executed it. The real fact cannot now be ascertained. The persons who alone could have any knowledge upon the subject are either dead or have left the parish. The fact, therefore, not being capable of proof, it appears to me reasonable to presume, that individuals appointed to a public office would not act for six months without taking that oath which the law required them, and which it was their duty to take. It does not appear whether it was usual to hold visitations at the time when churchwardens were elected. From the year 1751 to 1758, there is not in the visitation-books any entry of churchwardens having been sworn in. I cannot presume that, during that period, the practice was not to swear the churchwardens into office. The reasonable presumption is, that the persons who were appointed churchwardens in those years went to the commissary, and were sworn in before him; and the fact of there being in the visitation-books no entry of the swearing in of the churchwardens during that period, is consistent with this presumption; for it may have been thought unnecessary that they should be again sworn in at the visitation. I think, therefore, that in this case, we ought, upon general principles, to intend that every thing necessary to be done to make this certificate valid was done; and consequently that we ought to intend that *Piper*, before he executed it, was sworn into office in the manner suggested by my brother *Bayley*, or even, if necessary that *Piper* and *Harbutt* were appointed churchwardens and sworn into office in 1750, and that they continued to act as churchwardens at the time when the certificate was granted. But it was objected that it was not signed by all the churchwardens, although in the body of the instrument it purported to be the act of all; but that is immaterial. The act of parliament only requires that the certificate shall be signed by the churchwardens and overseers or the major part of them. The words “the major part of them” do not mean the major part of the overseers, but of the churchwardens

and overseers taken as one aggregate body, and it is only necessary, therefore, that a majority of that aggregate body should concur in the act required to be done. The certificate in this case having been signed by three out of four, I think it is sufficient, and that being so it is valid; and the order of sessions must therefore be quashed.—Order of sessions quashed.

185. *Rex v. Upton Gray, E. T. 10 & 11 G. 4. — 10 B. & C. 807.*—Upon appeal against an order of two justices, whereby *T. Woodman*, his wife and children were removed from the parish of *Upton Gray* to the parish of *Bishop's Waltham*, in the county of *Southampton*, the sessions quashed the order, subject to the opinion of this Court on the following case:—A certificate was produced by the respondents from the parish chest of their parish, signed by two churchwardens and two overseers of the parish of *Bishop's Waltham*, dated the 16th of *April* 1748, by which it was acknowledged to the former parish, that *Peter Woodman*, the great grandfather of the pauper, was legally settled in the latter parish. The certificate had never been discharged so far as it regards the pauper. On the part of the appellants it was proved from the parish books of *Bishop's Waltham*, that on the 27th day of *May* 1747, five overseers were appointed by the said parish; their names were *Harris, Edney, Vernon, Stares, and Cowdery*, of whom *Harris* and *Cowdery* signed the above certificate, dated the 16th of *April* 1748. In an indenture of parish apprenticeship, dated the 24th of *October* 1747, it was recited that at that time the said five persons, viz., *Harris, Edney, Vernon, Stares, and Cowdery* were overseers; and that at the same time four persons named *Homer, Barefoot, Hellyer and Wateridge* (of whom *Homer* and *Wateridge* signed the above certificate), were churchwardens of the parish of *Bishop's Waltham*. It was also proved on the part of the appellants, from the parish books, that a church rate for the said parish for the year 1747 was signed on the 8th of *May* 1748 by four churchwardens, whose names were there stated to have been *Horner, Barefoot, Hellyer and Wateridge*. It was also proved on the same part from the same books, that on the 6th of *July* 1748 five overseers were again appointed for the same parish, whose names were there stated to have been *Lacy, Parker, Trodd, Edney, and Suet*. It appeared also by the said parish books, that from the year 1633 to 1829, four churchwardens had been regularly chosen every year of the said parish. By the proper visitation books for 1746, it was proved that four churchwardens were sworn in for the parish of *Bishop's Waltham*, for the year ensuing the date of such swearing in. The visitation books for the year 1747 were lost. By the visitation books for 1748, it was proved that on the 19th of *September* 1748 four churchwardens were sworn in for the said parish for the year ensuing that date. By the same books it appeared, that in twelve

A parish certificate, dated the 16th of *April* 1748, purported in the body of it to have been granted to a pauper and his family by two churchwardens and two overseers. It appeared that on the 27th of *May* 1747 five overseers had been appointed, two of whom had signed the above certificate; and an indenture of a parish apprentice of that date recited, that the said five persons were at that time overseers, and that four persons were named churchwardens, two of whom signed the certificate; and that on the 6th of *July* 1748, five overseers were again appointed; that four churchwardens had been regularly chosen from 1633 to 1829. By the visitation books for 1746, it appeared that four churchwardens were sworn in. The visitation books for 1747 were lost. From those for 1748 it appeared that on the 19th of *September* 1748, four churchwardens were sworn in for the year ensuing, but that between the years 1683 and 1829 in twelve instances less than four churchwardens had been sworn in. At the sessions it was insisted, that in order to give effect to so ancient a document, it ought to be presumed either that a new and valid appointment of overseers had been made between the 24th of *October* 1747, and the date of the certificate, 16th *April* 1748, or that at that date there were not four churchwardens sworn in. The court of quarter sessions having refused so to presume, held the certificate to be invalid, and this Court affirmed their decision.

or thirteen different years, between the years 1683 and 1829, four churchwardens *had not been sworn in* for the said parish, but that in those instances less than four had been sworn in. It was contended on the part of the appellant parish, that under the circumstances above stated, the certificate granted by the appellant parish was bad, it having been signed by two out of five persons, whose appointment as overseers was void as to all, (inasmuch as by the stat. 43 *Eliz.* c. 2. s. 1. not more than four overseers can be appointed,) and on the ground that the majority of the parish officers had not signed it. On the part of the respondent parish it was contended that after so long a period (being more than eighty years), any possible case by which the certificate might be supported ought to be presumed. Hence, as it might be presumed, either that a new and valid appointment of *Cowdery* and *Harris* as overseers, had been made for the appellant parish in the interval between the 24th of October 1747 (when it is recited as above that there were five overseers), and the date of the certificate 16th of April 1748; or that at that date there were not four churchwardens sworn in, in either of which cases the certificate would be signed by a majority of the parish officers, such presumption should now be made.—BAYLEY J. This is an attempt to carry the cases of *Rex v. Catesby* (a) and *Rex v. Whitchurch* (b) to a most unreasonable extent. In the last of those cases in the certificate four persons were described as churchwardens and overseers of the parish, but it purported to be signed by three of them only; by one *Piper* as churchwarden, and by two others as overseers. It was proved by the visitation books that in the year 1758 the two churchwardens were sworn in after the date of the certificate; and it was therefore contended that *Piper*, the party who signed the certificate as churchwarden, was not at that time churchwarden *de jure*, and therefore that it was not binding on the parish. It appeared further by the visitation books that no churchwardens were sworn in from 1751 to 1758, but the parish who had granted the certificate had, from the year 1758 to the time when the order of removal was made, treated it as valid, for it had relieved the pauper while he was residing in another parish. The sessions having found in favour of this certificate, the Court held that it might reasonably be presumed that *Piper*, after his nomination in 1758, and before he did any act as churchwarden, had gone to the commissary and had been sworn into office before him; and under the circumstances of that case, such a presumption was not unreasonable, for it was not inconsistent with any other fact. In *Rex v. Catesby* the certificate which the law required to be signed by a majority of the parish officers, purported to be signed by one churchwarden and one overseer. If, therefore, there were two churchwardens and two overseers, it was not valid. The sessions having presumed in favour of the certificate, it was for the Court to say whether there could be any state of facts to make it a valid certificate, and they decided that it might be valid on two grounds. By custom there might have been only one churchwarden in the parish, and therefore the sessions might have presumed that one only was appointed; or two overseers might have been originally appointed, and one of them have died before the certificate was granted. Then what is the state of facts here? Can

(a) 2 B. & C. 814. 2 *Bolt*, pl. 727. (b) 7 B. & C. 573. *Ante*, pl. 184.

the Court say that the justices at sessions have done wrong in refusing to make the presumption which they were called upon to make? It is conceded that the presumption is one of fact, which in an ordinary case it would be for a jury to decide; but it is said that a jury ought to draw such a presumption whether they believe the fact really did exist or not; and a dictum of Sir *W. Grant* to that effect has been cited. To that, as a general proposition, I cannot agree. I would not direct a jury to presume that which they believe to be contrary to the fact. Here the fact which we are called upon to presume is not only highly improbable in itself, but wholly inconsistent with other facts which existed about the same time. We are first to presume that the four churchwardens were not sworn in. That would be presuming that they committed a breach of duty when we ought to presume rather that they discharged their duty. It is then said that we may presume that one of the churchwardens died. Such a presumption, if made at all, ought to have been made by the sessions, and not by us. The other ground is still more unreasonable. It is said that there was a bad appointment of overseers, and that we ought to presume a new appointment of overseers before the certificate was granted. In the next year, however, it appears that five overseers were again appointed. We must, therefore, presume that the error as to the number of overseers was discovered between *October 1747* and *April 1748*, although the ancient erroneous practice was again adopted in *October 1748*. I think there was nothing in this case to warrant any presumption of fact necessary to give validity to this certificate, and I cannot say that the sessions ought to have drawn from the facts stated any of the conclusions which it has been insisted they ought to have drawn.—*LITLEDALE J.* concurred.—*PARKE J.* I am of the same opinion. The doctrine attributed to the Master of the Rolls in *Hillary v. Waller* may be true as applied to the particular subject-matter which he was then discussing. A jury would probably be directed to presume, after a lapse of time, the reconveyance of a legal estate by trustees, without any specific evidence of a deed of conveyance, provided there be no fact to rebut such presumption.—Order of sessions confirmed. (a)

Of Continuation and Determination of Certificates.—2 Bott, pl. 769.

Where pauper, being the son of a certificated person, residing with his father under the certificate as one of his family, was at the age of nineteen and upwards bound apprentice, and served his master out of the certificated parish, and at-

186. *Rex v. Manningtree*, *E. T.* 57 *G. 3.*—6 *M. & S.* 214.—On appeal the quarter sessions quashed an order for the removal of *William Finch*, *Sarah* his wife, and their two children, from the parish of *Manningtree*, in the county of *Essex*, to the parish of *Culphoe*, in the county of *Suffolk*, subject to the opinion of this Court on the following case:—The pauper was born in the parish of *Manningtree*, where his parents were residing under a certificate from the parish of *Culphoe*. When he was nineteen years of age and upwards he was bound apprentice by indenture to *Richard Hobson*, residing at *Mistley*, in the county of *Essex*, hoyman, for three years, to serve on board his vessel engaged in the coasting trade from the port of *Mistley* to the port of *London*; he served his master for more than two years, when he ran away, the vessel then being at *Mistley*. About eight months previously to his thus leaving his master's service

(a) See *Doe d. Fenwick v. Reed*, 5 B. & A. 232.

he had attained the age of twenty-one years, during which eight months he slept at his father's house in *Manningtree* for more than forty nights with the knowledge, consent, and approbation of his master, his master not having any room in his own house for the pauper, and he slept in his father's house in *Manningtree* the night before he left his master's service. Whenever the vessel was at *Mistley*, the pauper uniformly slept in his father's house in *Manningtree*, during the whole period of his service under the indentures, as well before as after he attained the age of twenty-one. No evidence was offered to shew that the pauper had gained a settlement in any other parish. He was not married when he left his master's service, neither had the pauper's father at that time done any act whereby to discharge the certificate. The Court were of opinion that the pauper gained a settlement in *Manningtree*.—Lord ELLENBOROUGH C. J. It has occurred to this Court upon reference to the statute 3 W. & M. c. 11., which requires a binding as well as an inhabiting in order to confer a settlement by apprenticeship, for the words are "such binding and inhabitation," that in a case like the present, where the pauper is to be withdrawn from the effect of a certificate and placed in a condition to acquire a settlement in the certificated parish by some act clearly indicative of his being *sui juris*, the binding must, for this purpose, be after he has attained his full age. It is plain the binding here was before he was of age; and that seems to make an end of the question.—BAYLEY J. It is clear, I think, that a settlement could not be gained in *Manningtree* by this pauper by means of a binding and service there while he was under age. A settlement in that parish could only be acquired by him after he became *sui juris*; and as it regards a settlement by apprenticeship, the act of binding as well as inhabitation ought, as it seems to me, to be one entire act after he has accomplished his full age, and not an act in part commencing during his nonage. The binding, therefore, as well as the inhabitation ought in this case to have been after he was twenty-one. In this the distinction lies between the present case and *Rex v. Morley (a)*, because both a hiring and service after the pauper had attained his full age concurred in that case. The present decision, it should be observed, will not militate with any former cases. The Court does not say that where a settlement in the certificated parish is not in question, this doctrine will apply; if the question here were upon the effect of this binding coupled with a service under it in a third parish, the Court does not pronounce that the pauper would not have acquired a settlement. For instance, let the binding be in parish A., the service in B., and let the apprentice sleep in C.; in that case the settlement would be in C.: yet if C. be the certificated parish, then, unless the binding and sleeping be entire after the pauper be of full age, he does not acquire a settlement in C. This I apprehend is the distinction on which the Court means to decide the present case.—HOLROYD J. The son of a certificated person, included in the certificate as a part of his family, can only gain a settlement in the certificated parish when he is *sui juris*. Under the stat. 3 W. & M. c. 11. two things are requisite to confer a settlement by apprenticeship, viz. binding and inhabitation. By analogy to that statute, where the question regards a settlement in the certificated parish, both these must concur after the party is of full age so as to make

tained his majority about eight months previously to leaving his master's service, during which time he slept at his father's house in the certificated parish, with his master's consent, he not having room for him in his own house for more than forty nights; and on the night before he left the service: Held, that he did not thereby gain a settlement in the certificated parish.

The pauper being the son of a certificated person, residing with his father under the certificate as one of his family, was at the age of eleven years bound apprentice, and served his master in the certificated parish for eight years, when he was removed to the certifying parish, which acquiesced in his removal, and received him as their parishioner. The pauper stayed in that parish about a week, and then returned to his master in the certificated parish, and served him there more than forty days: Held, that the pauper did not gain a settlement by apprenticeship in that parish, inasmuch as the binding was before he became of age.

this an act *sui juris*. If the apprentice had been bound when he was of age, and had served afterwards, *Rex v. Morley* would have been in point.—Order of sessions quashed.

187. *Rex v. Queenborough*, E. T. 1 W. 4.—2 B. & Ad. 219.—On appeal against an order of two justices, whereby *Finnis Webb* was removed from the parish of *Milton* next *Sittingbourne*, in the county of *Kent*, to the parish of *Queenborough*, in the same county, the sessions confirmed the order, subject to the opinion of this Court on the following case:—In the year 1775, the parish of *Queenborough* granted a certificate for *Robert Webb*, the pauper's grandfather, and several individuals of his family by name, to the parish of *Milton* next *Sittingbourne*, under which certificate *William*, one of the persons named, the father of the pauper, has continually from that time hitherto resided in *Milton*. On the 10th of *July*, 1810, the pauper then being about eleven years of age, and residing as part of his father's family under the certificate, was bound without any premium an apprentice to his father's brother, *Daniel Webb*, an inhabitant of *Milton*, as a dredgerman, for the term of ten years. His master covenanted in the indentures of apprenticeship to find him in board, lodging, and clothing, and to instruct him in the art and business of a dredgerman; and he continued to serve under the indenture until *January* 1818, when his master and his family became chargeable to the parish of *Milton*. The master, having originally resided under the above certificate, and not being then supposed to have acquired a settlement in *Milton*, was, with his family, removed to *Queenborough*; but on his arriving there, and an explanation taking place, this order was abandoned. The pauper was afterwards, by another order of removal, bearing date the 5th of *February*, 1818, removed to *Queenborough*; which parish acquiesced in his removal, and received him as their parishioner. The pauper stayed at *Queenborough* about a week, and then returned to *Milton*, to the said *D. Webb*, and continued with him there under circumstances which amounted to a service and residence of forty days under the indenture subsequently to his return. He never gained a settlement in any other parish. The question for the opinion of the Court was, Whether the pauper gained a settlement in the parish of *Milton* by the above binding, and the service performed after his removal to *Queenborough*?—LORD TENTERDEN C. J. The binding in this case, having been before the pauper attained his full age, is not distinguishable from that in the case of *Rex v. Manningtree* (a), where it was held no settlement was gained in the certificated parish. That case must govern our decision in the present instance, unless we can say that a binding which was not available at the time it was made can be rendered so by matter *ex post facto*. I cannot think that any subsequent act of the parish can have the retrospective effect of making that binding effectual by relation which was not so at the time when it was entered into. The safest course is to adhere to the decision in *Rex v. Manningtree*.—LITLEDAL J. No subsequent act of the certifying parish will make the binding valid for the purpose of conferring a settlement in the certificated parish, which was not so at the time when it was made.—PARKE and PATTESON Js. concurred.—Order of sessions confirmed.

(a) 6 M. & S. 214. Ante, pl. 186

REMOVAL OF THE POOR.

Authority of the Justices.—2 Bott, pl. 794.

188. *Rev. v. Great Yarmouth, E. T. 8 G. 4.*—6 B. & C. 646.—This was an appeal against the removal of *R. Lenny*, his wife, and children, from *Woodbridge*, in the county of *Suffolk*, to *Great Yarmouth*, in the county of *Norfolk*, by an order made by *George Thomas* and *R. N. Shawe*, upon the complaint of the churchwardens and overseers of the poor of the parish of *Woodbridge*, in the county of *Suffolk*, that the paupers had become chargeable. Upon the hearing of the appeal it was proved that *George Thomas*, one of the magistrates who signed the order of removal, was at the time the order was made, one of the churchwardens of the parish of *Woodbridge*. The sessions confirmed the order of removal, subject to the opinion of this Court, whether the order of removal was or was not bad, on account of *George Thomas* being at the time when the order was made, one of the churchwardens of the parish of *Woodbridge*.—BAYLEY J. I think there was no objection to this order of removal, on the ground of interest in the magistrate. The statute 16 G. 2. c. 18. authorises justices to act (in the cases therein mentioned) notwithstanding they may be interested by reason of their being rateable. It is impossible to say that a churchwarden or overseer has any other interest in the removal of a pauper, except in his character of a rated inhabitant. He may, indeed, in the character of churchwarden, become liable to costs; but that responsibility can only attach to him in consequence of his improperly removing the pauper: it is, therefore, against his interest to make any order of removal as far as costs are concerned; for, by so doing, he subjects himself to a responsibility, which would not otherwise attach to him. But I think that it is a fatal objection to this order, that the person who was the complainant heard and adjudicated upon the complaint. I cannot consider him as divested of the character of churchwarden at the time when the order was made. It purports to be made on the complaint of the churchwardens and overseers; and the statute 43 Eliz. c. 2. commits the management of the poor to the churchwardens and overseers. From the nature of the thing, the complaint must have been made by the churchwardens and overseers. Then, if the churchwardens made the complaint, the person who was one of the complainants heard and adjudicated upon it. Upon that ground I think the order of removal was bad, and that the order of sessions confirming it ought to be quashed.—HOLROYD J. I also am of opinion that the order of removal is invalid, on the ground that the same person cannot, in point of law, be the complainant and the person hearing the complaint. The statute 16 G. 2. c. 18. enacts that magistrates, who, by reason of being rateable to the relief of the poor in any parish, are virtual parties to the complaint of chargeability upon which an order of removal is founded, shall be competent to act in the making of such order. In this case the parish officers are not only virtual, but acting parties to the complaint. Now, it is quite inconsistent that the same person should be a party to, and a judge in a suit. The two characters are incompatible with each other. In this case, therefore, as one of the parties who made the order was churchwarden of the

An order of removal, signed by two justices, one of whom, at the time, was churchwarden of the removing parish, is bad.

removing parish, and appears to have adjudicated upon a complaint to which he was a party, I think the order of removal was bad.—LITLEDALE J. I am of the same opinion. The statute 16 G. 2. c. 18., which enabled justices having an interest in the removal of a pauper, by reason of their being rateable in the parish, to remove a pauper, contemplated those cases only where there was one set of persons to complain and another to adjudicate, viz. churchwardens and overseers, as persons distinct from the justice to whom the complaint is made.—Order of sessions quashed.

Where an examination of a soldier, taken before two magistrates, was tendered in evidence to prove his settlement, but it did not appear by the examination itself, or by other proof, that the soldier, at the time when he was examined, was quartered in the place where the justices had jurisdiction: Held, that it was not admissible.

189. *Rex v. All Saints, Southampton*, H. T. 8 & 9 G. 4.—7 B. & C. 785.—Upon an appeal against an order of two of the justices of the peace for the county of *Hants*, whereby *Elizabeth Carden* was removed from the parish of *Romsey Extra*, in the said county of *Hants*, to the parish of *All Saints*, in the town and county of the town of *Southampton*, the sessions confirmed the order, subject to the opinion of this Court on the following case:—*Elizabeth Carden* was the widow of one *Richard Roe Carden* deceased, and in order to prove the settlement of the said *Richard Roe Carden*, the respondent parish offered in evidence, and duly proved, the paper writing following:—"Town of *Romsey Infra*, in the county of *Southampton*.—The examination of *Richard Roe Carden*, a private soldier in his Majesty's 25th regiment of foot, taken on oath before us, two of his Majesty's justices of the peace for the said town, the 6th day of *April* 1782, touching the place of his last legal settlement.—The said examinant on his oath saith, that he was born in the parish of *Romsey Infra* aforesaid, as he hath heard and verily believes, where his father was a settled parishioner. That about fifteen years ago last harvest, he hired himself as a covenant servant for a year to *David Pallaret*, of the parish of *All Saints*, in the town and county of the town of *Southampton*, esquire, at the wages of 4*l.* and in consequence thereof he entered into the service of the said *David Pallaret*, and served him there till about *Christmas* following, when this examinant went with his master and his family to *London*, where he stayed with him about three months, when he returned with his said master to the said parish of *All Saints*, and continued in his said master's service there during the remainder of the said year, and at the expiration thereof he received his full year's wages. And that he hath never done any act since to his knowledge whereby to gain a settlement, and that he hath a wife named *Elizabeth*, and one child named *Moses*, aged two years and upwards.

(Signed) "RICHARD ROE CARDEN.

"Sworn the day and year
above mentioned before us,

(Signed) "WILLIAM BIGGS, Mayor.

"THOMAS DAWKIN."

The appellant parish objected to the Court's receiving this paper, inasmuch as it did not appear on the face of it, that at the time the examination was taken the soldier was quartered in the town of *Romsey Infra*, and therefore was not a due examination within the provision and meaning of the mutiny act. The Court, however, found the paper to be a due examination under the mutiny act, and thereupon confirmed the order. The question for the opinion of the Court is, whether such paper writing was a due examination within the provisions of the mutiny act or not. If it was, then the original order and order of sessions to

stand; but if not, then the said orders to be quashed.—BAYLEY J. I am of opinion that the examination given in evidence in this case was not properly admissible, and that the order of sessions must be quashed. The mutiny act 22 G. 3. gave to the justices a special power to examine, without which the examination would have been wholly extra-judicial. They had no jurisdiction except in the case of a soldier quartered in the place for which they were justices; it was, therefore, necessary to make out either aliunde or by the examination itself that the party examined was a soldier, and at that time quartered within that place. The case of the *Banbury Peerage* (a) is expressly in point. An attempt was made to prove a reputation as to pedigree by a bill and answer in equity, and depositions which purported to be made by servants in the family; and one question proposed by the House of Lords to the Judges was, whether those depositions were evidence that the parties making them were servants in the family, or whether that fact must be proved aliunde; and they held that it must be so proved. In the present case I am inclined to think it should have been proved aliunde that the party examined was a soldier, otherwise the examination must be considered as proof of the fact, which gave the justices jurisdiction; and, at all events, it should have appeared on the face of the examination that he was quartered at *Southampton*. In the case of *Regina v. Gouche* (b) it was held that jurisdiction shall be presumed unless the contrary appears; but that was overruled in *Rex v. Helling* (c), and the latter opinion was confirmed by Lord *Kenyon* in *Rex v. Hulcott* (d), after considering all the authorities. In principle I cannot find any distinction between this case and those relating to orders; in the latter the jurisdiction must appear on the face of the order, and I think it should in this case also; and for want of it, the examination ought not to have been received in evidence.—HOLROYD J. The rule; that in inferior courts and proceedings by magistrates, the maxim “omnia præsumuntur rite esse acta,” does not apply to give jurisdiction, has never been questioned. Here, then, the jurisdiction should, at all events, have appeared on the face of the examination; supposing proof of it aliunde not to have been necessary.—Order of sessions quashed.

Of the Examination.—2 Bott, pl. 833.

190. *Rex v. Trowbridge*, T. T. 8 G. 4.—7 B. & C. 252.—Upon appeal against an order of justices, whereby *M. Acorn*, and his wife, and children, were removed from the parish of *Trowbridge*, in the county of *Wilts*, to the parish of *Chatham*, in the county of *Kent*, the sessions quashed the order, subject to the opinion of this Court on the following case:—The pauper's first recollections were of his being in the workhouse at *Chatham*; he supposed he might be then about four or five years old. He never knew his father; and his mother was not in the workhouse with him. He staid in the workhouse until he was thirteen or fourteen, when he entered on board a man of war, and served in various ships till the year 1814. He then went to *Trowbridge*, and married there. Being out of work at

A pauper first recollected himself in the workhouse of the parish of *A.*, when he was about four years of age. He remained there till he was thirteen or fourteen years of age. He afterwards married, and lived

(a) 3 Selw. N. P. 743.
(c) 1 Str. 7.

(b) 2 Salk. 441.
(d) 6 T. R. 583.

in another parish, but when out of work, he returned on two different occasions to the parish of *A.*, and was not only relieved by the officers of that parish, but received money from them to enable him to return to the parish where he lived. The sessions having found that he was not settled in the parish of *A.*, the Court affirmed their decision.

The fact of the pauper's remembering himself, when four years of age, in the parish of *A.*, is no evidence that he was born there.

Trowbridge, he went, with his wife, to the workhouse at *Chatham*, where he stayed more than three weeks, during which time he was maintained there by the parish of *Chatham*, and on going away was furnished by the parish officers of *Chatham* with one pound in money, and a pair of shoes for him and his wife to return to *Trowbridge*. He returned thither, and remained there about ten years, when being again out of work, he went to *Chatham* again, with his wife and family, and stayed there about three weeks in the workhouse, and whilst there, was maintained by *Chatham*, and at the expiration of that time received one pound in money, and a pair of shoes for himself, his wife, and each of his children, and provisions to return to *Trowbridge*; at the same time he was desired by the *Chatham* overseers not to return to *Chatham* again without an order or pass. He then returned to *Trowbridge*, at which place he was afterwards relieved, and thereupon moved, by order of the magistrates to *Chatham*. The parish registers of *Chatham* were searched by the pauper, but no entry was found of his baptism, nor of any person bearing his name. *BAYLEY J.* If the decision in the case of *Rex v. Chatham* (a), establishes as a principle of law, that the bare fact of giving relief to a pauper while he is resident within a parish, is no evidence that he was settled there, it is manifest that the facts proved in this case could lead to no other legitimate conclusion, than that which the sessions have drawn from them. It is not necessary to decide in this case, whether the giving relief to a party resident within a parish, may or may not under certain circumstances be evidence from which the sessions may conclude that the party so relieved was settled in the relieving parish. For assuming that there was some evidence in this case to warrant such a finding, it was for the sessions to draw their own conclusion from the whole evidence. They have done so, and I think there is nothing stated in this case to warrant us in saying that their conclusion is wrong. It appears that the pauper first recollected himself in the workhouse at *Chatham*, and being in the workhouse at *Chatham*, the parish officers of that parish were bound to maintain him until they could ascertain where his settlement was, and that might be a very difficult matter. The relief given under such circumstances, was no evidence that the pauper was settled in the parish, because the parish officers were bound by law to maintain him until they could ascertain where his settlement was. It is true that the pauper on two occasions returned to *Chatham*, and was not only relieved by that parish, but had money given to him to take him back to *Trowbridge*, which, it has been said, was equivalent to relieving him, while resident in another parish. Relief given to a pauper while he is resident in another parish, is a distinct acknowledgment by the relieving parish, that they believe him to be settled there. But giving the pauper money to enable him to remove to *Trowbridge*, was no acknowledgment by *Chatham* that he was settled there. Assuming, therefore, that it was questionable upon the evidence, whether the relief was given to the pauper as a settled inhabitant or not, and that the sessions might have inferred that the pauper had been relieved by *Chatham*, because he was settled there, that was not a necessary conclusion. Being a question of fact, it was for the sessions to draw their conclusion, and I cannot say that their

decision is wrong. The mere fact of the pauper's having first remembered himself in *Chatham*, when he was four or five years of age, is not any evidence of his having been born in that parish. Upon the whole, I think that the sessions have drawn the proper conclusion from the evidence, and that their order must be confirmed. —Order of sessions confirmed.

191. *Rex v. Edwinstowe, M. T. 9 G. 4.—8 B. & C. 671.*—Upon an appeal against an order of two justices, whereby *Sarah Dewick* and her two children were removed from the parish of *Mansfield*, in the county of *Nottingham*, to the parish of *Edwinstowe*, in the same county, the sessions confirmed the order, subject to the opinion of this Court on the following case:—The pauper, at that time resident in *Mansfield*, applied for relief to Mr. *Bullivant*, the overseer of the appellant parish, at a public-house in *Mansfield*, a distance of seven miles from *Edwinstowe*, on a market day; he gave her three shillings as relief, and said if she wanted further relief she must apply to him again at *Edwinstowe*, and he would give it her. A fortnight after the pauper went for relief to *Edwinstowe*, when she saw Mr. *Bullivant* and Mr. *Sykes*, the other overseer. They then refused to give her relief, saying, she must throw herself upon the parish of *Mansfield*. —BAYLEY J. I agree that if there be not any premises to warrant the conclusion to which the justices at sessions have come, we are bound to reverse their decision. I do not say that, from the facts stated in the case, I should have drawn the same conclusion which the justices have done. But it was a question of fact; and it was for them to draw their conclusion from the evidence. Before we reverse their decision, we must see clearly that they were wrong. It is not sufficient that the evidence in support of their conclusion is slight. The question is, Whether there was any evidence to warrant the justices in coming to the conclusion? It appears that at the time when the relief was given, the parish-officer was at a distance from home. It is possible, however, that he may have known that the pauper was settled in *Edwinstowe*. If he did not know it, he might have said to the pauper, "I cannot tell whether you are settled in the parish or not, and I give you this whether you are settled there or not." But he gave the relief in an unqualified manner, and seems to have acted on the principle, that he conceived there was an obligation on his part to grant relief, and a right in her to demand it. It was for the sessions to draw their conclusion from these facts. There was some evidence upon which they might exercise their discretion; and though I might, perhaps, have come to a different conclusion, I think we are not at liberty to reverse their decision. —LITLEDAL J. I concur in the judgment delivered by my brother *Bayley*, entirely on the ground that there were some premises to warrant the sessions in coming to the conclusion to which they have come. The evidence was undoubtedly very slight; but it was for the sessions to draw their conclusion from it, and having done so, I think we ought not to disturb their decision. —PARKE J. Upon the evidence stated in this case, I should have come to a different conclusion. But it is for the sessions and not for us to draw the conclusion from the evidence given, and they having done so, I think their decision ought not to be disturbed.—Order of sessions confirmed.

Relief given to a pauper while he is residing out of the relieving parish, is *prima facie* evidence of a settlement in that parish; and evidence of one instance in which relief was so given was held to be sufficient to warrant a finding by the sessions that the pauper was settled in the relieving parish, although upon a second application relief had been refused.

Relief given to a pauper not residing in the relieving parish is *prima facie* evidence of his being settled there; but the sessions are not bound upon such evidence only to find that he is settled in the relieving parish; and therefore, where upon the trial of an appeal the pauper proved relief given to him by the appellant parish while resident in another parish, the sessions having quashed the order of removal, this Court refused to disturb the decision.

Relief given by a parish to a family resident in it, is no evidence of settlement, though the relief be continued for a long period, and though one of the family be put out apprentice by the parish.

192. *Rex v. Yarwell*, T. T. 10 G. 4. 9 B. & C. 894.—Upon appeal against an order of two justices, whereby *T. Ireson*, his wife and children, were removed from the parish of *Yarwell* in the county of *Northampton*, to the parish of *Stibbington*, in the county of *Huntingdon*; the sessions quashed the order, subject to the opinion of this Court on the following case:—The respondent proved by the pauper and his wife that the appellants had, about twenty-eight or twenty-nine years ago and at three or four times subsequently, the last time being ten years ago, relieved the pauper and his family while they were residing in the respondent parish. When they wanted relief they applied to the parish officers of the appellant parish for work, and as they could not find it for them, they allowed the family 12s. a week. It was the pauper's wife who applied for relief upon all those occasions except one, when the application was made by the pauper himself. He had been once examined by the appellants, and stated that he had been an apprentice in their parish. The appellants also, within the last six years, and while the pauper was resident in the respondent parish, paid the expenses of his wife's confinement in a lunatic asylum at *Peterborough*.—*BAILEY J.* The sessions have sent this case for our consideration, without telling us what question they wish to be answered. They have stated a strong *prima facie* case, from which they were at liberty to draw the conclusion that the pauper was settled in the parish of *Stibbington*, but they were not bound to do so. It was purely a question for them. The pauper might have been examined as to the fact whether he had ever gained, or whether there was a reasonable ground to conclude that he had gained a settlement in the appellant parish by apprenticeship, or otherwise. If he was not examined as to that, the sessions may have refused to act on presumptive evidence of settlement, when the respondents might have proved a settlement actually gained by the pauper in the appellant parish.—*LITTLEDALE J.* I am of the same opinion.—*PARKE J.* If the sessions intended to ask us whether there was *prima facie* evidence of a settlement in the appellant parish, I should have answered that there was, and that they ought to have acted upon it. If they asked me whether they were bound to do so, I should answer they were not.—Order of sessions confirmed.

193. *Rex v. Coleorton*, T. T. 11 G. 4 & 1 W. 4.—1 B. & Ad. 25.—Upon appeal against an order of justices removing *Joseph Allen*, his wife and children, from the parish or township of *Merevale* in *Leicestershire* to the parish or township of *Coleorton* in the same county, the sessions confirmed the order, subject to the opinion of this Court upon the following case:—The pauper's father died when the pauper was seven years of age, and left him residing with his mother in the parish of *Coleorton*, where, after her husband's death, she and several of her children were relieved during a long period, and while resident in the said parish. During this time, also, one of the children (the pauper's brother) was bound out by the parish of *Coleorton* into a third parish. But throughout the whole of the above time the mother of the pauper, with her children, received relief from the parish of *Thringstone*, whilst they were resident (as before mentioned) in *Coleorton*; and the pauper's mother having died in that parish, was buried there at the expense of the parish of

Thringstone. Upon this evidence the court of quarter sessions, being of opinion that the relief by the parish of *Coleorton* preponderated over the relief by *Thringstone*, confirmed the order of removal.—BAYLEY J. If there had been evidence on both sides, it would have been for the sessions to draw their own conclusion, and I should not have been inclined to disturb it. But if there is evidence on one side, and the sessions act upon what is not evidence on the other, and then send the case to us, it becomes a fit subject for our adjudication. It is decided, and I think rightly, by *Rex v. Chatham*, that relief by the parish in which a pauper resides, is no evidence of settlement. Lord *Ellenborough* there enters into the question, whether relief administered in more than one instance may not require a different consideration, but he concludes by laying it down as the best rule to abide by, that such relief, whether given once or several times, is not evidence. One powerful reason in support of this decision is the reluctance which parish officers would feel against relieving casual poor, if by doing so they were furnishing evidence against their own parishes. It is true that, in the present case, *Coleorton* has not only relieved the family, but bound out one of the children. The sessions, however, have not acted upon this fact *per se*, but upon the continued relief generally; and in my opinion the binding is no more evidence against *Coleorton* than the other circumstances; for parish officers may apprentice out paupers, being within the parish, whether settled or not. *Rex v. Yarwell (a)* does not militate against our present decision. In that case the sessions formed their own judgment on the facts, and afterwards sent a case to us, not stating upon what point they doubted. We, therefore, would not interfere with the conclusion they had come to. But here was evidence on one side and none on the other, and the sessions have determined that the no-evidence preponderated.—LITLEDALE J. The Court having decided in *Rex v. Chatham (b)*, that relief in circumstances like the present is no evidence, I think we ought to hold accordingly. The binding out of the child carries the case no farther, as the power of apprenticing does not depend upon the pauper being settled in the parish.—PARKER J. If this had been *res integra*, I should have had a difficulty in saying that the relief, being continued, was not evidence. But the contrary rule is so distinctly laid down in *Rex v. Chatham*, that we are bound to abide by it. As to the apprenticing, if the law had empowered parish officers to bind out settled paupers only, we might have sent the case back; but the statute of *Elizabeth* gives the power generally. The binding, therefore, is no additional proof, and the evidence on which the sessions decided was altogether illegal.—Order of sessions quashed.

Of the Adjudication.—2 Bott, pl. 858.

194. *Rex v. Maulden, E. T.* 9 G. 4.—8 B. & C. 78.—This was an appeal against an order of two justices, which was in the following words: "To the churchwardens and overseers of the parish of *Maulden*, in the county of *Bedford*, we, G. C. and T. B., clerks, "two of his Majesty's justices of the peace acting in and for the said county, by virtue of the powers vested in us by an act of the 5 G. 4.

An order of justices made under the 5 G. 4. c. 71. stated, "that the justices, after due ex-

(a) 9 B. & C. 894.

(b) 8 East, 498. 2 Bott, pl. 833.

amination had on oath, *having adjudged* the legal place of settlement of a pauper lunatic, confined in a lunatic asylum, to be in *M.*, did thereby require the churchwardens and overseers of *M.* to pay to the treasurer of the lunatic asylum 10*l.* 16*s.* due for twenty-four weeks' maintenance, &c. being at the rate of 9*s.* per week, and to pay the same weekly sum during so long a time as the pauper should remain therein." The parish of *M.* appealed against this order, and in their notice of appeal described it as an order of settlement and maintenance: Held, that as the parish of *M.* had treated this as the order of settlement, it must be presumed that there was no other order, and, therefore, the words, "*having adjudged*," must be understood as words of present adjudication, and that the order was good in this respect: Held, secondly, that so much of the order as was retrospective was bad, but that it was good for the residue.

"entitled 'An Act to amend several acts for the better care and maintenance of lunatics, being paupers or criminals in *England*,' and by desire of the visiting justices of the General Lunatic Asylum at *Bedford*, in the said county, after due examination had on oath, *having adjudged* the legal place of settlement of *Elizabeth Cole*, now a pauper lunatic confined in the said lunatic asylum at *Bedford*, to be in the parish of *Maulden*, do hereby by virtue of the powers vested in us by an act of the 48 *G. 3.* entitled 'An Act for the better care and maintenance of lunatics, being paupers or criminals, in *England*,' require you, the churchwardens and overseers of the poor of the said parish of *Maulden*, to pay to the treasurer of the said asylum the sum of 10*l.* 16*s.*, being the amount due for twenty-four weeks' maintenance, medicine, and clothing of the said *Elizabeth Cole*, at the rate of 9*s.* per week, as fixed upon by the visiting justices of the said asylum, from the 2d *November* 1826 to the 19th *April* 1827, the day of making this our order; and we do further order and direct you, the churchwardens and overseers of the poor of the parish of *Maulden*, to pay, from the date hereof, the sum of 9*s.* per week, or such other weekly sum, to the treasurer of the said asylum for the time being, as shall from time to time be fixed upon by the visiting justices of the asylum as a fit rate of maintenance, medicine, and clothing of the said *Elizabeth Cole*, during so long time as *Elizabeth Cole* shall be and remain in the asylum." It appeared by the notice of appeal that the appellants appealed against the order as an order of settlement and maintenance. The sessions having confirmed this order, *Bolland*, in last *Hilary* term, obtained a rule to shew cause why the original order, and the order of sessions, should not be severally quashed for their insufficiency, upon the ground, first, that it did not contain any distinct adjudication that the pauper was settled in *Maulden*, and, secondly, that it was retrospective.—Lord TENTERDEN C. J. I think that on reading the order and the notice of appeal we must assume, that there was but one order and one proceeding. The appellants by the notice of appeal, treat the order in question as an order of settlement. That being so, the first question is, Whether there appears on the face of the order a sufficient adjudication by the justices, that the pauper's last place of settlement was in *Maulden*? The justices say in their order, "that they by virtue of the powers vested in them by the stat. 5 *G. 4.*, after due examination had on oath, *having adjudged* the legal place of settlement of the pauper to be in *Maulden*." Now it is conceded, that if the justices had said, "that they *do adjudge*," it would have been sufficient. As the appellants, however, by their notice of appeal treat the order in question as an order of settlement, we must assume that there was no other order made; and if that be so, we cannot understand the words "*having adjudged*" to have been used in any other sense than that which would have belonged to the words "*do adjudge*." The next question is, Is the order good altogether? It is objected to as being retrospective. The effect of a retrospective order is to bring on inhabitants, who ought not to bear it, a charge incurred during a former period. It is quite unnecessary that the justices should have the power of making a retrospective order, for an order for the payment of a weekly maintenance might have been made as soon as the pauper was placed in the asylum, and as there is not any necessity that the justices should have such power,

and as no such power is expressly reserved to them, I am of opinion that they had it not. This order, therefore, so far as it relates to the bygone time is bad, but good as to the residue.—Rule absolute for quashing the order as to the 10l. 16s. ; discharged as to the residue.

Of the Direction of the Order.—2 Bott, pl. 866.

195. *Rex v. Justices of Denbighshire*, M. T. 1 W. 4.—1 B. & Ad. 616.—*D. Pollock* had obtained a rule, calling upon the justices of *Denbighshire* to shew cause why a certiorari should not issue, directed to them, to remove into this court all orders made by them between *Thomas Owen*, *David Pritchard*, and *William Jenkins*, inhabitants of part of the parish of *Machynlleth*, in the county of *Montgomery*, appellants, and the churchwardens and overseers of the poor of the parish of *Llangerniew*, in the county of *Denbigh*, respondents, touching the removal of certain paupers, and all proceedings relating thereto. The circumstances of the case were as follows.—By an order of removal, dated the 2d of September 1829, the churchwardens and overseers of *Llangerniew* were directed to convey the paupers from that parish to the parish of *Machynlleth*, and to deliver them to the churchwardens and overseers of the poor there, or some or one of them, and the latter were required to receive the said paupers as inhabitants of their parish.—*Machynlleth* was at that time divided into three districts, each maintaining its own poor. Two churchwardens were appointed for the whole parish, and one overseer for each district. The paupers were delivered to the overseer of one of these districts, namely, the township of *Uwchygarreg*, where their settlement was understood to be. The overseer of the township, with the two parish churchwardens (describing themselves as churchwardens of the township,) gave notice of appeal. The case came on at the next quarter sessions ; and on proof of the service of the notice, the appeal was dismissed on the grounds that there appeared to be only one overseer for the appellant district, and that the churchwardens, described as of the township, were in fact those of the parish. A fresh appeal was then entered at the same sessions on behalf of the above-mentioned *T. Owen*, *D. Pritchard*, and *W. Jenkins*, as inhabitants of a part of the parish of *Machynlleth*. These appellants were rated inhabitants of *Uwchygarreg*. Shortly afterwards two overseers were appointed for the same township, and they, with the churchwardens of the parish, then gave the respondent parish two notices of their intention to prosecute the appeal at the next sessions, one notice describing it generally as “an appeal against “an order,” &c., the other, as an appeal lodged at the last sessions by the three inhabitants above named. These last-mentioned parties also gave notice at the same time of prosecuting their appeal ; and another notice was given by the attorney for the appellants, describing himself as attorney for the three above-named inhabitants, for the churchwardens and overseers of the parish, and for the churchwardens and overseers of the township. The appeal was heard at the following sessions ; and the order of removal was there quashed

The parish of *M.* was divided into three townships, each maintaining its own poor, and appointing only a single overseer. An order of removal was directed to the overseers and churchwardens of the parish, and the pauper was delivered to the overseer of one township ; that overseer, with the churchwardens (described as churchwardens of the township), gave notice of appeal, but at the next sessions the appeal was dismissed (without enquiring into merits) on the grounds that it was prosecuted only by a single overseer, and that the churchwardens were those of the parish, not the township. At the same sessions an appeal was again entered against the order by some inhabitants of the township, and two overseers were soon afterwards appointed for the township, who, as well as the above-mentioned inhabitants and the parish churchwardens, gave the respondents notice of prosecuting the appeal. At the following sessions the appeal was heard, and the order of removal quashed on the merits. On motion for a certiorari, upon the ground of irregularity in the proceedings, this Court refused to interfere.

upon the merits, with costs, by an order of sessions purporting to be made between *T. Owen, D. Pritchard, and W. Jenkins*, inhabitants of the parish of *Machynlleth*, appellants, and the parish of *Llan-gerniew*, respondents.—Lord TENTERDEN C. J. I think the rule ought to be discharged. This is a parish consisting of three divisions respectively maintaining their own poor. The order to receive the paupers was directed to the churchwardens and overseers of the parish; but it seems the paupers were not taken to any regularly appointed officers of the parish, or of any district, or to the inhabitants, but to a single overseer appointed for one township. An appeal was entered on behalf of the churchwardens and of the overseer for that township; the sessions held that it could not be entertained, and dismissed it, but without going into the merits. A new appeal was entered at the same sessions in the names of some inhabitants of the parish, that course becoming necessary under the circumstances; and two overseers were afterwards appointed, who gave notice of prosecuting the appeal. Then at the following sessions the magistrates were of opinion that they ought to hear the appeal; they did so, and have decided on the merits: justice has been done; and I think we ought not to disturb their decision.—The rest of the Court concurred.—Rule discharged, but without costs.

Of suspending Order of Removal.—2 Bott, pl. 882.

An order was made on the 21st of May 1825, for the removal of a pauper to parish A. and suspended on the same day on account of the infirmity of the pauper. That parish had no notice of the order till the 12th of August 1826, when it was served. Another order, dated the 24th of January 1831, directed that the order of removal should be executed, and 80*l.* paid to the removing parish by parish A., and this order was served on, and the pauper removed to, parish A. on the 16th of February 1831. A. appealed to

196. *Rex v. Penkridge, E. T. 2 W. 4.*—3 B. & Ad. 538.—An order was made by two justices of the county of *Stafford*, dated the 21st of May 1825, for the removal of *William Cooper* to the parish of *Leamington Priors*, in the county of *Warwick*, the execution of which order, was (by another order of the said two justices indorsed on the order of removal, and made on the same day,) suspended on account of the infirmity of the pauper, which rendered him unable to travel. No notice of this suspended order was given to the parish of *Leamington Priors* until the 12th of August 1826, when that parish was served with a copy of the order of removal, and the order for suspending the same. Against this order the parish of *Leamington Priors* did not appeal until the removal of the pauper hereinafter mentioned. By another order made by two justices, dated the 24th of January 1831, and also indorsed upon the said order of removal, reciting that it appeared to the last-mentioned justices that the said order of removal might be executed without danger, and further stating that it had been duly proved to them on oath, that the expense of 80*l.* 12*s.* 4*d.* had been incurred by the suspension of the order of removal, the two last-mentioned justices directed that order to be forthwith put into execution, and the churchwardens and overseers of the said parish of *Leamington Priors* to pay to *W. S.* therein mentioned, on demand, the said sum of 80*l.* 12*s.* 4*d.* This last-mentioned order, and the order of removal, and the order for suspending the same, were served on the parish officers of *Leamington Priors* on the 16th of February 1831; the pauper was at the same time delivered to them, and payment was demanded of the above-mentioned sum. The parish of *Leamington Priors* appealed against the suspended order of removal and the order of the 24th of January 1831, at the *Easter* sessions for the county of *Stafford*, in the year 1831, being the first sessions after the removal of the pauper and de-

mand of the expenses. Upon the hearing of the appeal, the counsel for the appellants objected that the original order of removal had not been served within a reasonable time after it had been made. The court of quarter sessions were of that opinion, and quashed both the orders appealed against, subject to the opinion of this Court on the above facts.—Lord TENTERDEN C. J. delivered the judgment of the Court. This was a suspended order, of which no notice was given to the parish of *Leamington Priors* till fifteen months after it was made, the pauper having been, during that period, in such a state that it was improper to remove him. The order of *January* 1831, in fact only took off the suspension. The suspended order was by two justices, who were to inquire and adjudicate as to the propriety of removing the pauper. The other order was by justices who were only to direct the execution of the first order, and the payment of the charges attending it. The removal, therefore, was under the first order, and there was an appeal against it, on the ground that, as it was not served for so long a period after it was made, it was a mere nullity; and it was argued that this being so, the appeal to the sessions next after the actual removal of the pauper was in good time. If the first order had, by reason of the death of the pauper, become inoperative, it would have become a nullity of course; but the objection here taken was, that it was not served within a reasonable time; the sessions have so found, and of that they are the proper judges. It is, however, a question for us, whether the order was for that reason absolutely null and void, or voidable only. In our opinion it was voidable only, and ought to have been avoided by appeal to the next practicable sessions after it was served. By the omission to appeal to that sessions, the parish to which the removal was to be made, lost its opportunity of making that objection to the order. In *Rex v. Lampeter (a)*, the appeal was to the sessions next after the service of the order. Besides, that was a case where the order was not served till after the death of the pauper, and it had, therefore, become a nullity. Here, the pauper was living at the time when the order was served, and there might, therefore, have been an appeal to the then next sessions.—Rule absolute for quashing order of sessions.

the then next sessions, and the sessions found that the original order of removal was not served within a reasonable time: Held, that it was not, therefore, void, but voidable only by appeal, and that parish *A.* ought to have appealed to the next practicable sessions after it had notice of the original order.

APPEAL TO THE SESSIONS.

Who may Appeal.—2 Bott, pl. 942.

197. *Rex v. Justices of Denbighshire, M. T. 1 W. 4.*—1 B. & Ad. 616.—*D. Pollock* had obtained a rule, calling upon the Justices of *Denbighshire* to shew cause why a certiorari should not issue, directed to them, to remove into this Court all orders made by them between *Thomas Owen, David Pritchard* and *William Jenkins*, inhabitants of part of the parish of *Machynlleth*, in the county of *Montgomery*, appellants, and the churchwardens and overseers of the poor of the parish of *Llangerniew* in the county of *Denbigh*, respondents, touching the removal of certain paupers and all proceedings relating thereto. The circumstances of the case were as fol-

The parish of *M.* was divided into three townships, each maintaining its own poor and appointing only a single overseer. An order of removal was directed to the overseers and churchwardens.

(a) 3 B. & C. 454. 2 Bott, pl. 882.

of the parish, and the pauper was delivered to the overseer of one township; that overseer, with the churchwardens (described as churchwardens of the township) gave notice of an appeal, but at the next sessions the appeal was dismissed (without enquiring into merits) on the grounds that it was prosecuted only by a single overseer, and that the churchwardens were those of the parish, not of the township. At the same sessions an appeal was again entered against the order by some inhabitants of the township, and two overseers were soon afterwards appointed for the township, who as well as the above-mentioned inhabitants and the parish churchwardens gave the respondents notice of prosecuting the appeal at the following sessions, the appeal was heard and the order of removal quashed on the merits. On motion for a certiorari upon the ground of irregularity in the proceedings this Court refused to interfere.

lows:—By an order of removal, dated the 2d of September 1829, the churchwardens and overseers of *Llangerniew* were directed to convey the paupers from that parish to the parish of *Machynlleth*, and to deliver them to the churchwardens and overseers of the poor there, or some or one of them, and the latter were required to receive the said paupers as inhabitants of their parish. *Machynlleth* was at that time divided into three districts, each maintaining its own poor. Two churchwardens were appointed for the whole parish and one overseer for each district. The paupers were delivered to the overseer of one of these districts, namely, the township of *Uwchygarreg* where their settlement was understood to be. The overseer of the township with the parish churchwardens (describing themselves as churchwardens of the township) gave notice of appeal. The case came on at the next quarter sessions; and on proof of the service of the notice, the appeal was dismissed, on the grounds that there appeared to be only one overseer for the appellant district, and that the churchwardens described as of the township were in fact those of the parish. A fresh appeal was then entered at the same sessions on behalf of the above mentioned *T. Owen, D. Pritchard* and *W. Jenkins*, as inhabitants of a part of the parish of *Machynlleth*. These appellants were rated inhabitants of *Uwchygarreg*. Shortly afterwards two overseers were appointed for the same township, and they with the churchwardens of the parish, then gave the respondent parish two notices of their intention to prosecute the appeal at the next sessions, one notice describing it generally as “an appeal against an order,” &c., the other as an appeal lodged at the last sessions by the three inhabitants above named. These last mentioned parties also gave notice at the same time of prosecuting their appeal; and another notice was given by the attorney for the appellants, describing himself as attorney for the three above named inhabitants, for the churchwardens and overseers of the parish, and for the churchwardens and overseers of the township. The appeal was heard at the following sessions, and the order of removal was there quashed upon the merits with costs, by an order of sessions purporting to be made between *T. Owen, D. Pritchard* and *W. Jenkins*, inhabitants of the parish of *Machynlleth*, appellants, and the parish of *Llangerniew*, respondents.—Lord TENTERDEN C. J. I think the rule ought to be discharged. This is a parish consisting of three divisions respectively maintaining their own poor. The order to receive the paupers was directed to the churchwardens and overseers of the parish; but it seems the paupers were not taken to any regularly appointed officers of the parish, or of any district, or to the inhabitants, but to a single overseer appointed for one township; an appeal was entered on behalf of the churchwardens and of the overseer for that township; the sessions held that it could not be entertained, and dismissed it, but without going into the merits. A new appeal was entered at the same sessions in the names of some inhabitants of the parish, that course becoming necessary under the circumstances; and two overseers were afterwards appointed, who gave notice of prosecuting the appeal. Then at the following sessions the magistrates were of opinion that they ought to hear the appeal; they did so; and have decided on the merits; justice has been done, and I think we ought not to disturb their decision. The rest of the Court concurred.—Rule discharged, but without costs.

198. *Rex v. Justices of Salop, E. T. 1 W. 4.*—2 B. & Ad. 145. —By statute 32 G. 3. c. 85. certain persons are incorporated under the name of the guardians of the poor of that part of the parish of *Whitchurch* which lies within the county of *Salop*, and twelve of them are to be directors of the poor. It is further enacted (sections 50, 51.) that the directors shall enter the contracts and other proceedings, and the receipts, payments, debts, and credits of the corporation of guardians in a book, which, on reasonable request and notice from any person paying rates, shall be produced for his inspection at any of the courts, assemblies, or meetings of the said corporation holden pursuant to the act; that such rate-payer may then and there “protest, and declare his objection to or observations upon” any of the charges, rates, matters, or proceedings contained in the book, and the same “shall then be heard and taken into consideration by such court;” and if the matter of objection cannot then be settled to the satisfaction of the objecting party, it shall be adjourned to the next court or meeting of the corporation, *to be then finally heard and determined*. It is afterwards provided (sect. 56.) that if any person shall think himself aggrieved by any thing done in pursuance of the act, “and for which no particular method of relief hath been already appointed,” such person may appeal to the justices of the peace at any general quarter sessions to be holden for the county, “within four calendar months next after the cause of complaint shall have arisen,” and the determination of the sessions shall be final, binding, and conclusive to all intents and purposes.—At the general quarter sessions for *Shropshire* in *October 1830*, *John Holland*, a rated inhabitant of the district mentioned in the act, appealed against certain orders which had been made for payment of money, and certain payments which had been made and allowed, within the preceding four months, by authority of the directors. The objection alleged was, that the orders, payments, and allowances were in respect of annuities which ought not to have been granted, and of interest on parish securities for debts which had been improperly contracted. The justices, after hearing counsel on each side, refused to go into the appeal, on the grounds, first, that the statute had provided a method of relief in this case, by application to the guardians and directors at one of their meetings; and secondly, that the annuities had been granted, and the debts on which the interest was paid had been contracted, more than four months before the sessions. A rule was afterwards obtained, calling on the justices to shew cause why a mandamus should not issue, commanding them to enter continuances and hear the appeal.—Lord TENTERDEN C. J. I think the sessions ought to have heard the appeal. As to the first objection; the appeal to the sessions is given in cases for which no particular method of relief has been already appointed by the act. But the fifty-first section merely provides that a party having any objection to the proceedings of the guardians, may, at a court holden by them, protest and make his objection or observations, which shall be then heard and taken into consideration; and if such court cannot then finally settle and determine the matter to the satisfaction of the party making the objection, the same shall be adjourned over to the next court or meeting of the corporation, to be then finally heard and determined. But if they then persist in the proceeding objected to, it does not appear to me that this clause can

Guardians and directors of the poor were incorporated by statute, and were thereby ordered to hold certain courts and meetings, at which any rate payer might object to their proceedings or accounts, and such objection should be taken into consideration; and if the matter could not at that time be settled to the satisfaction of the complaining party, it should be adjourned to the next court, to be there finally heard and determined.

A subsequent clause provided that any person aggrieved by any thing done in pursuance of the act, and for which no particular method of relief was already appointed, might appeal to the quarter sessions to be holden within four calendar months next after the cause of complaint should have arisen.

A rate payer appealed to the sessions against an order of the directors for the payment of sums due on annuities, and as interest on loans. The order had been made less than four months back, but the

debts had not been incurred nor the annuities granted within four months : Held, that the appellant was not confined to the remedy pointed out by the first-mentioned clause of the act, and that the cause of complaint had arisen within four months.

be looked upon as giving any method of relief against their order. With regard to the time of appealing; the matter objected to is the order for payment, and the payment, of interest and annuities. That seems to me the substratum of the complaint; not the borrowing money or granting annuities. An appeal, therefore, within four months of the order, is in due time. What the sessions may decide on such an appeal is another question: we have only to determine whether or not they should have heard the appeal; and I think they should.—LITLEDAL J. I think the "cause of complaint" was the making the order, not the borrowing, or granting the annuities. Whatever the sessions might determine when they came to hear the appeal, I think they ought to have heard it.—PARKE J. I am of opinion that the appeal was in time, and that it is immaterial when the annuities were granted or debt incurred. The grievance is, the being burdened in respect of the payments. If this were not so, a debt might be contracted privately by the directors, and if no interest were called for till the expiration of four months, the parishioners would have lost their right of appeal.—PATERSON J. concurred.—Rule absolute.

Of notice of Appeal.—2 Bott, pl. 952.

A rule and practice of the court of quarter sessions, that in all cases of appeal, not otherwise directed by law, ten days' notice in writing shall be given by appellants to respondents, and that in cases of respited appeals the like notice is given, unless there be any agreement between the parties to the contrary, are not applicable to the case of an appeal adjourned to the next sessions at the instance and for the accommodation of respondents; and therefore where, an appeal having been so adjourned, the justices dismissed it at the next sessions

because the appellant had not given notice of his intention to prosecute it at those sessions, the Court granted a mandamus to the justices to hear the same.

199. *Rex v. Justices of Lindsey, T. T. 57 G. 3.*—6 M. & S. 379. —An order of removal from *Messingham* in *Lincolnshire* to *Tickhill*, in the county of *York*, was made on the 7th of *January* last. On the 11th, *Tickhill* gave notice that they would enter and try the appeal at the ensuing sessions at *Preston* on the 21st. At which sessions, the appeal being called on, the respondents applied to put off the hearing to the following sessions, on account of the absence of a material witness; and, accordingly, the hearing was adjourned on payment of costs of the day by the respondents. At the following sessions (22d *April*) the parties attended, when the respondents objected to the hearing of the appeal, on the ground that the appellants had not given any notice of their intention to prosecute and try the appeal at the said sessions. For the appellants it was insisted, that no such second notice was requisite, more especially as the hearing of the appeal had been adjourned at the instance of the respondents. The justices, however, inclining to the objection, refused to hear the appeal, and confirmed the order, without going into the merits.—Lord ELLENBOROUGH C. J. The appeal was adjourned at the instance of the respondents, who now require notice: but have they not in effect had notice? The object of giving notice is to inform a person of that of which he may otherwise remain ignorant; but a person cannot be supposed to be ignorant of that which is done at his own request, and for his own convenience.—BAYLEY J. The rule and practice of the sessions, as set forth in the affidavit, do not appear to me to apply to this case, but only to the common case of entering and respiting an appeal. In many cases parties enter and respite their appeals, in the first instance, as a matter of course, not having fully satisfied themselves of all the facts of the case. But here the appellants were ready, and in a condition to try, and but for the application of the respondents, would have tried their appeal: the respondents ask that it may stand over to the next sessions, and the

Court allows it. This act of the respondents, in desiring to respite the appeal, is in effect an agreement on their part that they will be ready to try at the next sessions without notice. — *Per Curiam*, Rule absolute.

200. *Rex v. Justices of Lancashire*, H. T. 8 & 9 G. 4. — 7 B. & C. 691.—A rule had been obtained for a mandamus to the justices to enter continuances, and hear an appeal which had been dismissed for want of sufficient notice. It appeared by the affidavit of *James M'Queen*, attorney, that on the 6th of July 1827 he was instructed by one of the overseers of *Flagg*, in the county of *Derby*, to appeal against an order of removal dated the 28th of June, and he was informed by the overseer that he had received a copy of that order on the 4th. At the next quarter sessions held on the 16th of July, from the distance of witnesses, and difficulty of access, he had not had sufficient time to make enquiries, and collect evidence for those sessions, and the appeal was, therefore, lodged and respited to the October sessions, which were held on the 22d of October. On the 8th of October he served notices of appeal on the parish-officers of the removing parish. By a rule of the court of quarter sessions, made in January 1816, it was resolved that, for the future, in all cases of appeals to be tried (unless otherwise directed by act of parliament,) the appellants should give to the respondents fourteen days' notice in writing of such appeals, *exclusive of the day of notice, and the day of holding the sessions* at which the same were to be tried. The attorney thought the fourteen days were to be calculated one day exclusive, the other inclusive. The court of quarter sessions dismissed the appeal, on the ground that the notice was one day too late.—Lord TENTERDEN C. J. We think that justice will be most satisfactorily administered by ordering the justices to enter continuances and hear this appeal. They certainly have a discretionary power to make rules for the governance of the practice at the sessions, but the case cited shews that this Court, for the purposes of justice, will interfere to controul that discretion.—Rule absolute.

201. *Ex parte Becke*, T. T. 2 W. 4. — 3 B. & Ad. 704.—*Campbell* moved on behalf of the above party, for a rule to show cause why a mandamus should not issue to the justices of *Middlesex*, to hear an appeal preferred by him against an order of filiation. It appeared, that at the April sessions 1832, this appeal came on to be heard, and the appellant then moved that it might be postponed till the following sessions, on affidavits, stating that a material witness for the appellant was absent; that the appellant had made various endeavours to meet with him, but believed that he kept out of the way to avoid being subpoenaed; that the appellant proposed to advertise for his discovery, and believed that, if time were granted, he should be able to find him. It appeared also that another material witness, who had been subpoenaed for the appellant, was called on her subpoena, and did not appear; and in the affidavit afterwards made in support of the application to this Court, the appellant stated his belief that the witnesses acted in collusion with the woman who filiated the child. The magistrates, after hearing counsel for and against the adjournment, came to a vote, and decided against it;

hear the appeal, and affidavits tending to shew that they had acted unjustly in not granting the postponement, this Court refused to interfere, the matter being one peculiarly within the discretion of the magistrates.

Where an appeal against an order of removal was dismissed on the ground that the appellant had not given the notice required by the rules of the justices, this Court, thinking it reasonable that the appeal should be heard, granted a mandamus to the justices to enter continuances and hear the appeal.

The appellant against an order of filiation, moved the court of quarter sessions for a postponement of the appeal, on account of the absence of material witnesses. They rejected the application, upon which the appellant declined going into his case, and the order was confirmed. On motion for a mandamus to the justices to

upon which, by advice of the appellant's counsel, no attempt was made to go into the merits of the appeal, and the order was confirmed.—Lord TENTERDEN C. J. It is true that in some instances, as where the sessions have established a rule, which, in its operation, has been found manifestly inconvenient for the purposes of justice, this Court has interfered to control their discretion, but it is going a great length. Here the application was to postpone the hearing of an appeal upon certain grounds laid before the court of quarter sessions, and they did not think fit to postpone it. If we granted a mandamus under these circumstances, it would be taking upon us to say in each individual case whether or not it is right for the sessions to comply with such an application.—LITLEDALE J. It was a question peculiarly for the sessions. This Court ought not to interfere. PARKE and TAUNTON concurred.—Rule refused.

Of the Sessions to which Appeal must be made.—2 Bott, pl. 972.

Where an order of removal was made on the 2d January and served on the 7th, and the sessions were holden on the 14th, and the appellant parish was fifteen miles from the place of holding the sessions, by the practice of which sessions eight days' notice was required in order to enable an appellant to enter and try his appeal: Held, that the appellant might pass by the first sessions, and give notice for, and enter and try his appeal at, the following sessions.

Semble, That it is unnecessary to enter and respite an appeal at the next sessions, where the order of removal is

202. *Rex v. Justices of Southampton*, T. T. 57 G. 3.—6 M. & S. 394.—A rule *nisi* was obtained on a former day for a mandamus to the justices of the county of *Southampton* to receive and hear an appeal against an order of removal from *Ropley* to *Bentworth*. The order was made on the 2d of *January*, and served on the 7th. The sessions were holden on the 14th at *Winchester*. By the practice of the sessions eight days' notice is necessary in order to entitle a party to have the appeal heard. The distance between the two parishes is five miles, and *Bentworth* is fifteen miles from *Winchester*. No appeal was entered at the *Epiphany* sessions; but at the *Easter* sessions, a regular notice having been given that the appeal would be entered and prosecuted, the appellants claimed to enter and be heard accordingly. The sessions, conceiving that the appeal ought to have been entered and respited at the former sessions, dismissed it.—Lord ELLENBOROUGH C. J. The order was made on the 2d and not served till the 7th: and the sessions were held on the 14th. What prevented the order's being executed promptly? If it had been served immediately, the appellants might, for any thing that appears to the contrary, have gone to the first sessions and tried their case. The respondents having by their own act abridged the time, it seems reasonable that the appellants should be allowed to the next sessions, *nunc pro tunc*, for this purpose: for where delay has been caused by one party the most favourable construction should be adopted as it regards the other.—BAYLEY J. It seems very fit, under the circumstances, that this appeal should be heard.—ABBOTT J. The effect of the delay was to prevent the appellants, if they had been so minded, from trying their appeal at the first sessions. Allowing that a satisfactory reason might be given for the delay, still the appellants ought not to be prejudiced by it.—HOLROYD J. I am of the same opinion.—Rule absolute.

203. *Rex v. Justices of Kent*, M. T. 9 G. 4.—8 B. & C. 639.—An order for the removal of a pauper from the parish of *Lenham*, in *Kent*, to the parish of *Pluckley*, in the same county, was made on the 7th of *April*, and served on the 8th. The sessions were holden on the 15th of *April*, at *Maidstone*. By the practice of the sessions, eight clear days' notice of the intention to try an appeal is required. The appeal was not entered at the *April* sessions, but the

parish officers of *Pluckley* gave eight clear days' notice of their intention to try the appeal at the *July* sessions. At the time when the order of removal was served, the parish officers of *Pluckley* said they should appeal; the parish officers of *Lenham* observed, that nothing could be done at the then next (*April*) sessions as there would not be eight clear days before those sessions. The court of quarter sessions refused to hear the appeal, on the ground that it ought to have been entered and respited at the sessions which were holden on the 15th of *April*. A rule nisi having been granted for a mandamus to the justices of the county of *Kent* to enter continuances and hear the appeal.—Lord TENTERDEN C. J. We think it reasonable, under the circumstances of this case, that the parish officers of *Pluckley* should have an opportunity of trying their appeal. They may probably have been misled by the observation made by the parish officers of *Lenham*, that they could do nothing at the then next (*April*) sessions, as there were not eight clear days before those sessions. Independently of that, it appears to me to have been wholly unnecessary to enter and adjourn the appeal at the first sessions, when they could not, according to the practice of those sessions, then try it.—Rule absolute. (a)

204. *Rex v. The Justices of Devon*, *H. T.* 1829.—8 B. & C. 640. n. —An order of removal from the parish of *Upottery* to *Pittminster* was served on the 8th of *April*. The sessions were held at *Exeter* on *Tuesday* the 15th day of *April*. The distance between *Pittminster* and *Upottery* is eight miles, and between *Pittminster* and *Exeter* thirty miles. By the practice of the sessions eight clear days' notice of the intention of the appellant to try his appeal is required. But an appeal may be entered and respited without any notice. The appeal was not entered at the *Exeter* sessions. But eight days' notice of the intention to try the appeal at the *July* sessions was given by the appellant parish. The court of quarter sessions refused to hear the appeal, on the ground that it ought to have been entered at the *April* sessions. A rule nisi for a mandamus to the justices of *Devon* to enter continuances and hear the appeal having been granted.—Lord TENTERDEN C. J. This was a rule for a mandamus to the justices of *Devon* to enter continuances and hear an appeal. The order of removal was served on the 8th of *April*; the sessions were holden on the 15th at *Exeter*. By the practice at those sessions, eight clear days' notice of the intention to try an appeal was required. It is clear, therefore, that in this case the appellant could not have tried his appeal at the *April* sessions; but it was contended that he ought to have entered it at those sessions, and adjourned it to the next. The entry for the mere purpose of adjournment is an useless act, and only occasions unnecessary expense. I think, therefore, that he was not bound to enter it at those sessions. One inconvenience only can follow from our holding, that it is not necessary, under such circumstances, to enter the appeal at the first sessions, viz. where the removal is made within eight days of the sessions, so that the parish to which the pauper is removed cannot try their appeal at those sessions, the removing parish may not know of the intention of the other parish to appeal until eight days before the second sessions. If that should prove to be an inconvenience, the court of quarter sessions may remedy it by requiring, under such circumstances, a longer notice. We think that the

served so late as to render it impossible to try the appeal at those sessions.

An order of removal was served too late to enable the parish to which the pauper was removed to try an appeal at the next sessions; but it might have been entered and respited at those sessions: Held, that that was unnecessary, and that due notice of the intention to prosecute the appeal at the second sessions having been given, the court of quarter sessions were bound to hear and determine it.

court of quarter sessions ought to have heard the appeal, and that the rule for a mandamus must be made absolute.

Of Adjournment of Appeal.—2 Bott, pl. 983.

On appeal against an order of removal, both parties attended at sessions, full notice of appeal having been given, and no countermand. The appellants then moved to enter the appeal, and to respite it, on the ground of a material witness being absent. The sessions refused to comply with the motion, unless on payment of the costs of the day, which it was their practice to require in such cases; and the appeal was not entered. On motion for a mandamus, this Court held, that the sessions had exercised a proper discretion in refusing to respite, and that their not having entered the appeal was immaterial.

205. *Rex v. Justices of Monmouthshire*, H. T. 1 W. 4.—1 B. & Ad. 895.—An order having been made in August 1830 for the removal of certain paupers from *Aberystwith* in the county of *Monmouth* to *Merthyr Tydvil* in *Brecknockshire*, notice of appeal was duly served on the 8th of October for the sessions to be held at *Usk* in *Monmouthshire* on the 18th; such notice being sufficient according to the practice of the sessions. The parties attended at *Usk* on the 18th; and at a late hour of the day, the appeal not having then been entered, the appellants moved to enter and adjourn it, on an affidavit stating the absence of a material witness. The respondents, who had come prepared to try, and had received no countermand, opposed the granting of the motion, unless they were paid their costs of the day. The appellants offered forty shillings, the costs usually awarded, by the practice of the sessions, to the party succeeding on an appeal. The respondents declined this, but proposed to refer the amount to the clerk of the peace; and the Court refused to allow the appeal to be entered and respited, unless the appellants should agree to pay the costs of the day; this being conformable to the practice of the sessions in cases where due notice had been given and not countermanded. The appellants would not consent, and the appeal was not entered. A rule having been obtained, calling on the justices to shew cause why they should not enter continuances and hear the appeal—Lord TENTERDEN C.J. Entering the appeal is a mere nothing. The motion was to enter and adjourn. The justices consented to respite, if the appellants would pay the costs of the day. That being declined, I think the justices exercised a very proper discretion in refusing the adjournment.—Rule discharged with costs.

Of stating a Special Case.—2 Bott, pl. 999.

When the sessions on determining an appeal have granted a case, but none has been stated, the Court will, under some circumstances, direct a mandamus to the justices who heard the appeal, to state a case. But not where it is clear that such a proceeding could lead to no result; as where the chairman, in consequence of his own opinion and that of the court upon the facts, refused to sign any statement but one which would have excluded the point of law relied upon by the party demanding a case.

206. *Rex v. Justices of Pembrokeshire*, E. T. 1 W. 4.—2 B. & Ad. 391.—*Campbell* had obtained a rule nisi for a mandamus to the justices of *Pembrokeshire* to state a special case for the opinion of this Court, pursuant to an order of sessions made on hearing an appeal against an order of removal from *Narberth* to *Llanboidy*, and to return the case so stated into this Court. It appeared by the affidavits in support of the rule, that the appeal came on to be tried at the *Midsummer* quarter sessions for *Pembrokeshire*, in 1830, when, after hearing contradictory evidence on behalf of the two parties on a question of settlement by renting a tenement, the Court confirmed

the order; but, being requested to grant a case, did so in general terms, and without reference to any specific point. The attorneys could not agree in drawing up a case; and, upon their waiting on the chairman in order that he might settle the statements they had prepared, he said he could not sign any case by which it should not appear that the Court had decided in favour of the respondents on the facts, independent of the law. The appellants' attorney declined taking a case so stated.—Lord TENTERDEN C. J. The justices have confirmed the order, subject to a case. That is no confirmation, unless a case be stated. All we can do, under the circumstances, is to require them to enter continuances, and hear the appeal. I do not see how we can order them to state a case.—Rule discharged.—On a subsequent day in the term, *Campbell* stated to the Court a case, *The King v. The Earl of Effingham and Others* (a) (determined in *Hilary* term 1782), of which he had obtained a note taken by the late Mr. *Dealtry*, and in which the Court granted a mandamus to the justices present at the last *Bradford* (West Riding of *Yorkshire*) sessions, to state a case.—Lord TENTERDEN C. J. I admit that there may be instances in which such a mandamus may issue; but not that it ought to go upon the present application. Here the case, if stated, could come to nothing. The facts are for the judgment of the sessions; and, under the circumstances disclosed, it would evidently be useless to call upon them for a case.

(a) *Rex v. The Right Hon. the Earl of Effingham and Others*.—Motion for a mandamus to the Earl of *Effingham*, *Henry Wickham*, Esquire, *Henry Wood*, D. D., *Henry Zouch*, clerk, *Pemberton Milnes*, Esquire, *Sir Watts Horton*, Bart., and *Joshua Horton*, Esquire, justices, &c. for the West Riding of *Yorkshire*, commanding them to state a special case on an appeal between the inhabitants of *Northowram* and the inhabitants of *Hipperholme*, determined by them at sessions, 13th of *July* last; an affidavit that, the order being affirmed, the appellants desired a special case to be stated, which the sessions unanimously consented to; and Mr. *Heywood*, counsel for the appellants, drew the case; and in the afternoon both counsel tendered the case to the sessions for their approbation. Mr. *Wickham* and Mr. *Horton*, who joined in making the original order, and *Sir Watts Horton*, who had an estate in each parish, and therefore declined giving any opinion in the morning, were the only justices remaining, when *Sir W. H.* refused to permit the case to be stated; and he being joined by Mr. *Horton*, no case was stated.—Lord MANSFIELD doubted whether a mandamus could go to compel justices to state a case; but Mr. *J. Buller* saying, that in this instance the court of quarter sessions had actually agreed to state one, but *Sir W. H.* prevented it, a rule nisi was granted.—Lord Mansfield ordered the case annexed to the affidavits in support of the rule to be read; and, it being read, asked Mr. *Fearnley* what facts in the case he could controvert? Mr. *Fearnley* said he had not seen the case at the sessions, and was not prepared now to go into the truth of the facts. Mr. *Heywood* observed, that though the case was annexed to Mr. *Parker's* affidavit, none of the justices shewing cause had denied any fact in it. Lord Mansfield said there had been a misunderstanding; there did not seem to be any contrariety of facts, and the mandamus must go. Mr. *Fearnley* asked whether the justices must re-examine the witnesses? Lord Mansfield. They must do it in order to know what case to return, if there is a difference about the facts. In *Easter* term 1782, a return was made, stating a special case, and stating also that the sessions had discharged the order of two justices; and Mr. *Heywood* obtained a rule nisi for affirming this last-mentioned order of sessions; which rule was afterwards made absolute, no cause being shewn.

Of the Superintendency of the Court of King's Bench.—2 Bott, pl. 1010.

Where an appeal against an order of removal was dismissed on the ground that the appellant had not given the notice required by the rules of the justices, the Court, thinking it reasonable that the appeal should be heard, granted a mandamus to the justices to enter continuances and hear the appeal.

207. *Rex v. Justices of Lancashire*, H. T. 8 & 9 G. 4.—7 B. & C. 691.—A rule had been obtained for a mandamus to the justices to enter continuances and hear an appeal which had been dismissed for want of sufficient notice. It appeared by the affidavit of *James M^cQueen*, attorney, that on the 6th July 1827, he was instructed by one of the overseers of *Flagg*, in the county of *Derby*, to appeal against an order of removal dated the 28th June, and he was informed by the overseer that he had received a copy of that order on the 4th. At the next quarter sessions held on the 16th of July, from the distance of witnesses and difficulty of access he had not had sufficient time to make enquiries and collect evidence for those sessions, and the appeal was therefore lodged and respited to the October sessions, which were held on the 22d of October. On the 8th of October he served notices of appeal on the parish-officers of the removing parish. By a rule of the court of quarter sessions made in January 1816, it was resolved that for the future, in all cases of appeals to be tried, (unless otherwise directed by act of parliament) the appellants should give the respondents fourteen days' notice in writing, of such appeals *exclusive of the day of notice and the day of holding the sessions* at which the same were to be tried. The attorney thought the fourteen days were to be calculated one day exclusive, and the other inclusive. The court of quarter sessions dismissed the appeal on the ground that the notice was one day too late.—Lord TENTERDEN C. J. We think that justice will be most satisfactorily administered by ordering the justices to enter continuances and hear this appeal. They certainly have a discretionary power to make rules for the governance of the practice at the sessions, but the case cited (a) shews that this court for the purposes of justice will interfere to controul that discretion.—Rule absolute.

Where it was made a question of fact at the sessions whether there was a hiring and service for a year in the appellant parish, and the sessions confirmed the order of removal subject to the opinion of this Court as to a settlement being gained there by hiring and service: Held

208. *Rex v. The Inhabitants of the parish of St. Andrew-the-Great, in the town and county of Cambridge*.—8 B. & C. 664.—Upon appeal against an order of two justices, whereby *Mary Ann Tarrant*, single woman, was removed from the parish of *Ely St. Mary*, in the Isle of *Ely*, to the parish of *St. Andrew-the-Great*, in the town and county of *Cambridge*, the sessions confirmed the order subject to the opinion of this Court on the following case:—It was proved that the pauper was hired to a Mrs. *Furbanck*, as nursery-maid in the parish of *St. Andrew-the-Great*, in *Cambridge*, and lived there for five months, that she then went to Miss *Henley*, a straw-bonnet maker in the same parish, and asked her if she could give her work in her business, which she said she would for a fortnight or three weeks; that she did give her work for that time, two shillings a week and her board, and that during this period the pauper lodged at her uncle's in another parish; that after that she went into

(a) See *Rex v. The Justices of Wiltshire*, 10 East, 404.—2 Bott, pl. 746.

Miss *Henley's* house, being told by Miss *Henley* that she might sleep there, and further, that when she wanted clothes, she Miss *Henley* would find them for her. She had her board, but no wages. That after her thus coming to the house to sleep, Miss *Henley* told her she might provide a place for herself elsewhere when she could, and that she repeated this two or three times during her stay; that soon after this she went to visit her mother, who was ill in *Ely*, leaving some of her clothes behind her; that she asked Miss *Henley's* leave to go, who gave her some pocket money; that she stayed with her mother three weeks, and returned without any order from Miss *Henley*; that she went a second time to see her mother, had leave for one week, but stayed three, and finally left Miss *Henley* three weeks after her return; she staid altogether about fifteen months, did the household work, and after having done that she went to the straw-bonnet work. During the time the pauper remained in the house, Miss *Henley* had no other servant. If the Court of King's Bench shall be of opinion that a settlement by hiring and service was gained in the parish of *St. Andrew-the-Great*. Under the above circumstances, the order of sessions is to be confirmed. If the Court of King's Bench shall be of a contrary opinion, then both orders are to be quashed.—BAYLEY J. It was a question of fact for the sessions to decide, whether there was a contract of hiring for a year in the parish of *St. Andrew*. They have decided that there was such a contract for a year, and if there be any premises to warrant their decision, we ought not to disturb it. Now in this case the original contract between the pauper and her mistress was not for a year, but for a fortnight or three weeks. During the period which she served under that contract, she lodged at her uncle's house and received weekly wages. After that she was told by Miss *Henley* that she might sleep in her house, and that when she wanted clothes, she, Miss *Henley*, would find them for her. From this it may therefore be inferred, that both parties at that time contemplated that there should be a continuation of the service beyond the period required by a weekly hiring, until at least the pauper had earned the value of her clothes. The justices may have thought that that was an indefinite hiring, and if so, that it was a hiring for a year. It is true that Miss *Henley* afterwards told her that she might provide a place for herself elsewhere when she could. But if there was once a contract for a year, that could not be varied without the consent of both parties. Afterwards from time to time she had leave to go home, but there was no dissolution of the contract. Upon the ground, therefore, that if there be premises to warrant the sessions, in the conclusion to which they have come, it is not for this Court to say that they have come to a wrong conclusion upon a question of fact; we think that their decision in this case ought not to be disturbed.—LITLEDAL J. It was for the justices at sessions to decide the question whether there was a contract of hiring for a year. There were premises from which they might draw the conclusion that there was such a contract. From the same premises, I perhaps should have drawn a different conclusion, but the justices having decided the fact, I am of opinion that we ought not do disturb their decision.—PARKER J. It is not necessary to say what my decision would have been upon the evidence stated in this case. The question whether there was a contract of hiring for a year, was entirely a question of fact which it was for the

that this amounted to a finding by the justices at sessions, that there was a hiring and service for a year in that parish, and that such finding ought not to be disturbed by this Court, if there were any premises to warrant it.

Where the court of quarter sessions have found upon a case stated, that there was no general hiring, this Court will not disturb their decision, if there appear to have been any premises to warrant it.

justices at sessions to decide. They have decided it.. There were premises to warrant the conclusion to which they have come, and their decision ought not to be disturbed.—Order of sessions confirmed.

209. *Rex v. The Inhabitants of Rosliston in the County of Derby*, 8 B. & C. 668.—Upon appeal against an order of two justices, whereby *R. Taylor*, his wife, and one infant daughter, not then christened, were removed from the parish of *St. Michael*, in the city and county of the city of *Lichfield*, to the parish of *Rosliston* in the county of *Derby*, the sessions confirmed the order subject to the opinion of this Court on the following case :—*Richard Taylor*, the pauper, on the 6th of *February* 1827, and when about thirteen or fourteen years of age went with his mother to *J. Slater*, a victualler and farmer, living in *Sandford Street*, in the parish of *St. Chad*, otherwise *Stowe*, within the city and county of the city of *Lichfield*. The pauper's mother asked *Slater* if he wanted a boy : he said, " Yes." She then asked what wages he would give, he (*Slater*) said, " Let him, pauper, stop what time he would he would give him satisfaction if not in money in clothes." The pauper went into the service : a few days afterwards he looked after the horses, cows, and sheep, and attended to the general business of the farm. *Slater* gave the pauper his board, some clothing, and also some money at different times, and the pauper continued in such service in *St. Chad's* parish for thirteen months, and then ran away because *Slater* beat him. *Slater* never sent after the pauper, nor did the pauper ever offer to return to *Slater's* service ; but a few days after he had run away, he went to *Slater's* for his hat which *Slater* refused to give him. The pauper on his cross examination by the respondent's counsel stated, that at the time of hiring, *Slater* did not say that he (the pauper) might go away when he pleased, or that *Slater* might turn him away when he pleased. The court of quarter sessions were of opinion, that there was no general hiring in the parish of *St. Chad* otherwise *Stowe*.—*BAYLEY J.* I think in case that there were premises to warrant the sessions in finding that there was no general hiring, and under those circumstances we are not at liberty to say that they have come to a wrong conclusion. Our decision in this case is consistent with all the cases which have been cited. In *Rex v. Trowbridge* (a) it was held, that a hiring for so long time as the pauper pleased was a hiring at will, and excluded any presumption of a yearly hiring ; *Rex v. Great Bowden* is an authority to the same effect. That case establishes, that where it is part of the contract, that the master or servant may determine the service when they please, there is not any general or yearly hiring, and that no settlement can be gained under it. Considering this principle established by these two cases, we must see whether there were any premises to warrant the sessions in coming to the conclusion, that there was no general hiring in this case. It appears that when the pauper's mother asked what wages her son was to receive, the master said, " Let him stop what time he will, I will give him satisfaction in money or clothes." The sessions may have thought from this expression that the pauper was at liberty to go whenever he pleased. The question is not what conclusion I should have drawn from the same premises, but whether there were any premises to warrant the justices in coming to that conclusion. I think

(a) Ante, pl. 190.

that there were premises to warrant them in coming to that conclusion, and, consequently, we ought not to disturb their decision.—LITLEDALE J. I think there were sufficient premises to warrant the justices in deciding that there was no general hiring in this case. I probably should have drawn a different conclusion from the facts stated, but it was a question of facts to be decided by the sessions, and their decision ought not to be disturbed.—PARKE J. concurred.—Order of sessions confirmed.

210. *Rex v. The Inhabitants of St. Martin in Leicester, M. T. 9 G. 4. 8 B. & C. 674.*—Upon an appeal against an order of two justices, whereby *J. Ward*, his wife and children, were removed from the parish of *Great Bowden*, in the city of *Leicester*, to the parish of *St. Martin*, in the borough of *Leicester*, the sessions confirmed the order, subject to the opinion of this Court on the following case:—The pauper being then about fourteen years old went in company with his father to the house of one *Neale*, an innkeeper, in the parish of *St. Martin*, and informed *Neale* that he heard he wanted a lad. *Neale* answered, that “he had got one coming in a fortnight, but “that the pauper might stay for that fortnight till the other lad “came.” The pauper was to fill the situation of boots and tap-boy. He was to have his board and lodging in the house, and the vails which he might obtain in his employment. At the end of the fortnight the other lad came, but was not engaged by Mr. *Neale*, and the pauper continued in the service without any thing following between them and *Neale* for a period of three years and a quarter, at the end of which time, the pauper hearing that the place of ostler at another inn was vacant, went and engaged it without consulting his master, and removed into it on the following day, *Neale* telling him that if it was his mind to go he believed he must. The court of quarter sessions found that there was an implied order for a year, and confirmed the order.—BAYLEY J. I think that the justices were warranted in coming to the conclusion, that there was an implied hiring for a year in the parish of *St. Martin, Leicester*. It appears that the pauper applied to *Neale* and asked him, if he wanted a servant. If *Neale*, who agreed to take the pauper into his service, had said no more than that he should have his board and lodging and the vails, that would have been a case in which the laws would imply a general hiring. But the master assigns as a reason why he would not make a contract to hire the pauper for any longer period than a fortnight; that he expected another lad to come in a fortnight. The other lad did come, but he was not engaged; the pauper then continued in the service of *Neale*, nothing further having been said as to the terms or the period of service. Then the question for the consideration of the justices was whether the relation of master and servant was created between the parties, and for what period. That question depended on the understanding existing in the minds of the parties at the time. There can be no doubt that both parties understood that the relation of master and servant was created for a fortnight in the first instance. If the justices thought that the master refused to take the pauper for a year only, because he expected another person, they might, as that person was not finally hired, taking into consideration between the pauper and the master, and the subsequent service presume that there was a contract for a year. They might most properly have so presumed, if the master, in the first instance,

Where the Court of quarter sessions have from facts proved before them drawn the conclusion that there was an implied hiring for a year, this Court will not upon a case sent to them by the sessions, stating those facts, disturb that decision, if there appear any premises whatever to warrant it.

had hired the pauper without having said that he expected another person to come in a fortnight. If the conversation between the master and the pauper, omitting all mention of any other subject being expected, coupled with the subsequent service, would have been sufficient to raise a presumption of a yearly hiring. The justices might think that as the person so expected was not finally hired, both parties intended the relation of master and servant to continue for that period. I think, therefore, there were some premises to warrant the sessions in coming to the conclusion that there was a hiring for a year. The case of *Rex v. Pendleton (a)* is in point. There a pauper served a master under unstamped articles of agreement to work with him for three years at certain rates of weekly wages, and under certain covenants, after which he continued to serve his master for four years longer, without coming to any new agreement. It was held that the sessions might thence presume a yearly contract. In that case there was no new agreement between the parties, and the Court inferred that the relation of master and servant existed. In this case the justices at sessions were the proper persons to judge in what character the parties continued together after the master had refused to engage the other person whom he expected. They have exercised their judgment on that point, and I think their decision ought not to be disturbed.—LITLEDALE J. I should have drawn a different conclusion from the facts stated, but it was a question of fact for the justices to decide whether there was a contract for a year. There were premises to warrant them in coming to that conclusion, and upon that ground only I found my opinion that the decision of the sessions ought not to be disturbed.—PARKER J. concurred.—Order of sessions confirmed.

Of Evidence.

See *Rex v. Trowbridge*, ante, pl. 190. *Rex v. Edwinstowe*, ante, pl. 191. *Rex v. Yarwell*, ante, pl. 192. and *Rex v. Coleorton*, ante, pl. 193.

An entry in the register-book by the minister of the parish of the baptism of a child, which had taken place before he became minister, or had any connection with the parish, and of which he received information from the parish clerk, is not admissible in evidence, nor is the private memoran-

211. *Doe dem. Warren v. Bray*, M. T. 9 G. 4.—8 B. & C. 813.—Ejectment. At the trial before Vaughan B., at the Spring assizes for the county of Worcester 1828, the question was, Whether the defendant, *Aaron Bray*, was the legitimate son of his father? On the part of the defendant, among other evidence, the register-book of baptisms of the parish of *Castlemorton*, in the county of *Worcester*, for the year 1776, was produced; and it contained an entry of baptism of *Aaron*, the son of *John Bray*, and *Elizabeth* his wife, on the 6th of *February* 1776. It appeared, on cross-examination of the witness, that the entry was in the handwriting of the Rev. Dr. *Smith*, and that he did not become minister of the parish till the year 1777; that, during the years 1775 and 1776, the then incumbent of the parish was very infirm; and that the then clerk, who continued in office for several years afterwards, entered on slips of paper an account of the baptisms, &c.; and his memoranda, which had been preserved, were produced, and there was no doubt that Mr. *Smith* had made from them the entries in the register-book. It was

(a) 15 East, 449.—2 Bott, pl. 1039.

objected, under the circumstances, that neither the register nor the memoranda made by the clerk were admissible in evidence. The learned Judge received them. A verdict having been found for the defendant, a rule nisi for a new trial had been obtained, on the ground, that the evidence ought not to have been received.—BAYLEY J. There must be a new trial in this case. The register ought not to have been received in evidence. Registers should be made up promptly, and by the person whose duty it is to make them up. The register of baptism, in this case, purports to bear date the 6th of February 1776, but it was not made up till June 1777, and then it was made up,—not by the person who was minister of the parish at the time of the baptism, or by a person who appeared at that time to have any connection with the parish,—but by one who afterwards became the minister of the parish. It must be taken, therefore, that he made this entry after the death of the minister of the parish who was present at this baptism. He was recording a fact, therefore, not within his own knowledge, but one of which he received information from the clerk. I think, therefore, the register itself clearly ought not to have been received in evidence. But, then, supposing there was no register, it has been said, that the clerk's memoranda were admissible evidence to prove all the facts that could be proved by a register. It was not his duty to make such memoranda: they are mere private entries. *May v. May*, to which I referred during the argument, shews that a day-book, from which the entries in a register were made, is not admissible in evidence. The editor of *Burn's Eccl. Law*, after stating that case in vol. iii. page 293., makes the following observation;—"If, indeed, the entry in the day-book, representing the plaintiff as illegitimate, had been signed by the reputed father or the mother, or made under their direction, such evidence would have been admissible as the declaration of a deceased parent on a question of legitimacy; for the declarations of deceased persons, supposed to have been married, (who might themselves be examined, if alive,) are admissible to disprove the fact of marriage(a); but if, on the other hand, in the absence of such proof, the entry appeared to be merely a private memorandum, kept for the purpose of assisting the clerk to make up the register (and of that nature it seems here to have been considered), in that case it should not be received as the original authenticated entry." The editor, therefore, thought that the entry in the day-book would not be receivable in evidence in the character of a register, but that if it had been signed by the reputed father and mother, it might have been received as a declaration of the deceased parents. In the case of *Newham v. Raithby (a)*, the copies of the register of a dissenting chapel were not allowed to be pleaded in evidence in the ecclesiastical court, on the ground that they were mere private memoranda, and not copies of public documents, which are in official custody. So, in this case, the entries made by the clerk were mere private memoranda. They were not, therefore, admissible in evidence. The rule for a new trial must be made absolute.—Rule absolute for a new trial.

dum of the fact made by the clerk, who was present at the baptism.

(a) *Rex v. Bramly*, 6 T. R. 330.

(b) 1 Phill. 315.

STATUTES.

6 GEO. 4. c. 57.

An Act for the Amendment of the Law respecting the Settlement of the Poor, as far as regards renting Tenements and paying Parochial Taxes.
[22nd June, 1825.]

WHEREAS the settlement of the poor has been made, in some instances, to depend upon the annual value of tenements which they may have rented, or upon the annual value of tenements in virtue of which they have paid parochial rates: And whereas the ascertaining such value, in such respective cases, has given rise to very expensive litigation: And whereas doubts have been entertained, whether an act made in the fifty-ninth year of King George the Third, intituled *An Act to amend the laws respecting the settlement of the poor, as far as regards renting tenements*, has been effectual for the purpose of altering the law in respect of the necessity of proving the annual value of tenements so rented; and it is expedient that further provision be made relating thereto: Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the passing of this act, the said recited act of the fifty-ninth year of the reign of King George the Third, intituled *An Act to amend the laws respecting the settlement of the poor, so far as regards renting tenements*, shall be and the same is hereby repealed.

59 G. 3. c. 50.

59 G. 3. c. 50.
regarding tenements for settlement of the poor repealed.

II. And be it further enacted by the authority aforesaid, That no person shall acquire a settlement in any parish or township maintaining its own poor, by or by reason of settling upon, renting, or paying parochial rates for any tenement, not being his or her own property, unless such tenement shall consist of a separate and distinct dwelling house or building, or of land, or of both, *bond fide* rented by such person, in such parish or township, at and for the sum of ten pounds a year at the least, for the term of one whole year; nor unless such house or building, or land, shall be occupied under such yearly hiring, and the rent for the same, to the amount of ten pounds, actually paid for the term of one whole year at the least: Provided always, that it shall not be necessary to prove the actual value of such tenement; any thing in any act or acts, or any construction of or implication from any act or acts, or any usage or custom to the contrary notwithstanding.

What shall be deemed acquiring a settlement.

7 & 8 GEO. 4. c. 17.

An Act to extend the Provisions of an Act made in the Fifty-seventh Year of King George the Third, for regulating the Costs of certain Distresses.
[28th May, 1827.]

57 G. 3. c. 93. Whereas by an act passed in the fifty-seventh year of the reign of His late Majesty King George the Third, intituled *An Act to regulate the costs of distresses levied for payment of small rents*, certain regulations are made with respect to the costs and charges of levying and disposing of such distresses where the sum demanded and due shall not exceed twenty pounds: And whereas it is expedient that the said Act should be amended, by extending the same to distresses for other causes: Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the passing of this act, all the rules, regulations, clauses, provisions, penalties, matters, and things in the said act contained, shall extend and be construed to extend, and shall be applied and put in execution, so far as the same are applicable and capable of being put in execution, with respect to any distress or levy which shall be made for any land tax, assessed taxes, poor's rates, church rates, tithes, highways' rates, sewer rates, or any other rates, taxes, impositions, or assessments whatever, in all cases where the sum demanded and due for or in respect of such taxes, rates, tithes, assessments, or impositions shall not exceed the sum of twenty pounds, and in all cases where the whole of the several sums sought to be levied by distresses taken for different purposes at the same time shall not exceed the sum of twenty pounds; and that such costs and charges, and no other, shall be taken and payable as the costs and charges of the levy and disposition of such distresses; and that all such proceedings shall and may be had and taken against any and every person transgressing the regulations of the said act in the levying or distraining for any such taxes, rates, impositions, or assessments, and all such persons shall be liable to and shall incur such and the like penalties, as by the said act are directed, required, and imposed with respect to persons making any distress for rent contrary to the directions of the said act; and that in any order or judgment of any justices before whom any complaint shall be preferred in consequence of this act, such order shall be expressed to be made upon a complaint for the breach of the said recited act as amended by this act; and that the said recited act and this act shall be taken and construed together as one act, to all intents and purposes whatsoever.

Provisions of
recited act ex-
tended to dis-
tresses for taxes,
rates, tithes, &c.

7 & 8 GEO. 4. c. 38.

An Act for discontinuing certain Presentments by Constables.
[21st June 1827.]

Whereas in some parts of England the petty constables of the several parishes have, from a very remote period, been required to appear at a petty session held previously to every general goal

delivery and quarter session for the county in which such parishes are situate, and to make and sign before the justice or justices of the peace attending such petty session certain presentments of various indictable and other offences: And whereas the said presentments are attended with considerable expence and loss of time, and have, in consequence of modern legislative provisions, become useless and improper: Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the passing of this act, no petty constable shall be required at any petty session or elsewhere to make, nor shall any high constable be required at any general gaol delivery, great session, or general or quarter session of the peace in *England* to deliver any presentment respecting Popish recusants, persons absenting themselves from their parish church or any other place of religious worship licensed by authority, rogues and vagabonds, inmates, retailers of brandy, ingrossers, forestallers, regraters, profane swearers and cursers, servants out of service, felonies and robberies, unlicensed or disorderly alehouses, false weights and measures, highways and bridges, riots, routs, and unlawful assemblies, and whether the poor are well provided for, and the constables are legally chosen and sworn.

No constable shall be required to make presentments respecting the offences herein mentioned.

11 GEO. 4. c. 5.

An Act to repeal the Provisions of certain Acts relating to the Removal of vagrant and poor Persons born in the Isles of Jersey and Guernsey, and chargeable to Parishes in England; and to make other Provisions in lieu thereof. [19th March 1830.]

Whereas it is expedient to amend the laws relative to the removal of vagrant and poor persons born in the Isles of *Jersey* and *Guernsey*, and chargeable to parishes in *England*; and to make other provisions in lieu thereof; Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the lord spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That so much of an act made in the seventeenth year of the reign of King *George* the Second, intituled *An Act to amend and make more effectual the laws relating to rogues and vagabonds, and other idle and disorderly persons, and to houses of correction*, as relates to passing vagrants to the Islands of *Guernsey* and *Jersey*; and also so much of an act passed in the fifty-ninth year of the reign of King *George* the Third, intituled *An Act to amend the laws for the relief of the poor*, as relates to the removal of poor persons born in *Jersey* and *Guernsey*, who have become chargeable to parishes in *England*; and also so much of an act passed in the fifth year of the reign of His present Majesty, intituled *An Act for the punishment of idle and disorderly persons, and rogues and vagabonds, in that part of Great Britain called England*, as relates to the removal of poor persons born in the Isles of *Jersey* and *Guernsey*, and being chargeable to parishes in *England*, shall be and the same are hereby repealed.

Repeal in part of 17 G. 2. c. 5.

59 G. 3. c. 12.

and 5 G. 4. c. 83

Power to remove chargeable poor born in Jersey or Guernsey, at expence of complaining parish.

II. And be it further enacted, That it shall be lawful for two justices of the peace, and they are hereby required, upon the complaint of the churchwardens and overseers of the poor of any parish, that any person born in either of the Isles of *Jersey* or *Guernsey* hath become chargeable to such parish, by himself or herself, or his or her family, to cause such person to be brought before them, and to examine such person, and any other witness or witnesses, on oath, touching the place of the birth or last legal settlement of every such person, and to inquire whether he or she, or any of his or her children, hath or have gained any settlement in that part of the United Kingdom called *England*; and if it shall be found by such justices that the person so brought before them was born in either of the Isles of *Jersey* or *Guernsey*, and hath not gained any settlement in *England*, and that he or she hath actually become chargeable to the complaining parish, by himself or herself, or his or her family, then such justices shall and they are hereby empowered, by an order of removal under their hands and seals, to cause such poor person, his wife, and such of his or her children so chargeable, as shall not have gained a settlement in *England*, to be removed, by and at the charge and expence of the complaining parish, to the place of his or her birth.

1 W. 4. c. 18.

An Act to explain and amend an Act of the Sixth Year of His late Majesty King George the Fourth, as far as regards the Settlement of the Poor by the renting and Occupation of Tenements.
[30th March 1831.]

6 G. 4. c. 57.

Whereas by an act passed in the sixth year of the reign of His late Majesty George the Fourth, intituled *An Act for the Amendment of the Law respecting the Settlement of the Poor, as far as regards renting Tenements and paying Parochial Taxes*, it was among other things enacted, that no person shall acquire a settlement in any parish or township maintaining its own poor by or by reason of settling upon, renting, or paying parochial rates for any tenement not being his or her own property, unless such tenement shall consist of a separate and distinct dwelling house or building, or of land, or of both, *bond fide* rented by such person in such parish or township at and for the sum of ten pounds a year at the least for the term of one whole year; nor unless such house or building, or land, shall be occupied under such yearly hiring, and the rent for the same to the amount of ten pounds actually paid for the term of one whole year at the least: Provided always, that it shall not be necessary to prove the actual values of such tenements; any thing in any act or acts, or any construction of or implication from any act or acts, or any usage or custom, to the contrary notwithstanding: And whereas doubts have arisen with respect to the intentions of the legislature concerning the occupation of such house, building, or land by the person hiring the same, and concerning the amount of the rent to be paid and the person paying the same: And whereas it is expedient that such doubts should be removed; be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the

lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the passing of this act no person shall acquire a settlement in any parish or township maintaining its own poor, by or by reason of such yearly hiring of a dwelling house or building, or of land, or of both, as in the said act expressed, unless such house or building, or land, shall be actually occupied under such yearly hiring in the same parish or township, by the person hiring the same, for the term of one whole year at the least, and unless the rent for the same, to the amount of ten pounds at the least, shall be paid by the person hiring the same.

No person shall acquire a settlement by reason of a yearly hiring of a tenement, or of land, unless he shall actually occupy the same.

II. Provided always, and be it further enacted, That where the yearly rent shall exceed ten pounds, payment to the amount of ten pounds shall be deemed sufficient for the purpose of gaining a settlement under the said recited act.

Payment to the amount of 10*l.* shall gain a settlement.

1 & 2 W. 4. c. 42.

An Act to amend an Act of the Fifty-ninth Year of His Majesty King George the Third, for the Relief and Employment of the Poor.
[15th October 1831.]

Whereas by an act passed in the fifty-ninth year of the reign of His late Majesty King George the Third, intituled *An Act to amend the Laws for the Relief of the Poor*, certain power is given to churchwardens and overseers of the poor to provide land for the employment of the poor to an extent not exceeding twenty acres: And whereas such limitation to twenty acres has been found inconvenient in many parishes: Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That it shall and may be lawful for the churchwardens and overseers of the poor of any parish to hire and take on lease, for the employment of the poor of such parish, any suitable portion or portions of land within or near to such parish, to an extent not exceeding fifty acres.

59 G. 3. c. 12.

Churchwardens, &c. may provide land to a certain extent for employment of the poor.

II. And be it further enacted, That, in order to extend the salutary and benevolent purposes of this act, it shall and may be lawful for the churchwardens and overseers of the poor of any parish to inclose from any waste or common land or ground lying in or near to such parish, with the consent in writing of the lord of the manor and the major part in value of the persons having right of common thereupon, signified under their hands and seals, any part or portion of such waste or common land not exceeding fifty acres, and to cultivate and improve the same for the use and benefit of such parish and the poor persons within the same, or to let any part or parts of the same to any poor and industrious inhabitant or inhabitants of such parish, to be by him or them occupied and cultivated on his or their own account.

Churchwardens, &c. may inclose part of waste lands for cultivation, with consent.

III. And be it further enacted, That the powers and authorities hereby given to churchwardens and overseers of the poor shall extend to and may be exercised by the guardians of the poor of any parishes or places which are or may be incorporated or united under and by virtue of an act made and passed in the twenty-second

Power to hire land, &c. extended to guardians, &c.

- 22 G. 3. c. 83. year of the reign of His late Majesty King *George the Third*, intituled *An Act for the better Relief and Employment of the Poor*, or under or by virtue of any local act or acts and by the overseers of all townships, villages, and places having separate overseers, and maintaining their poor separately.

Provisions of recited act extended to lands hired, &c. under this act.

IV. And be it further enacted, That the clauses, powers, and authorities, regulations, provisions, and directions, in and by the said recited act given, contained, and made with respect to the providing of land for the employment of the poor, or to the cultivation, management, or disposition thereof, or to the poor persons employed thereon or renting any portion thereof, shall, so far as the same are applicable, be deemed and taken to extend to any land which shall be provided under this act, and to the poor persons employed thereon or renting any portion thereof respectively.

No settlement to be gained by lands hired.

V. Provided always, and be it further enacted, That no poor inhabitant of any parish or place, to whom any land shall be let which shall or may have been or shall be hired or taken or inclosed under or by virtue of the said recited act or this act, shall gain a settlement by reason of his renting and occupying or paying parochial taxes for such land, either alone or with any other land or tenement.

1 & 2 W. 4. c. 59.

An Act to enable Churchwardens and Overseers to inclose Land belonging to the Crown, for the benefit of poor Persons residing in the Parish in which such Crown Land is situated.

[20th October 1831.]

- 59 G. 3. c. 12. Whereas by an act passed in the fifty-ninth year of the reign of His late Majesty King *George the Third*, intituled *An Act to amend the laws for the relief of the poor*, power is given to churchwardens and overseers of the poor to provide land for the employment of the poor: And whereas it is expedient to extend such power, so as to enable churchwardens and overseers of the poor to acquire for such purposes portions of forest or waste lands belonging to the crown: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That it shall and may be lawful for the churchwardens and overseers of the poor of any parish to inclose from any forest or waste lands belonging to the crown lying in or near to such parish, with the consent in writing of the Lord High Treasurer or the Commissioners of His Majesty's Treasury of the United Kingdom of *Great Britain and Ireland* for the time being, to be signified by some warrant under his or their hand or hands, any part or portion of such forest or waste lands not exceeding fifty acres, for the purpose of cultivating and improving the same for the use and benefit of such parish and the poor persons within the same.

Churchwardens, with consent of treasury, may inclose crown lands not exceeding 50 acres.

Persons renting such land not to gain a settlement.

II. Provided always, and be it further enacted, That no poor inhabitant of any parish or place to whom any land shall be let which shall or may have been or shall be hired or taken or inclosed under or by virtue of the said recited act or this act, shall gain a settlement

by reason of his renting and occupying or paying parochial taxes for such lands, either alone or with any other land or tenement.

1 & 2 W. 4. c. 60.

An Act for the better Regulation of Vestries, and for the Appointment of Auditors of Accounts, in certain Parishes of England and Wales. [20th October, 1831.]

Whereas it is expedient to provide for the election of vestries, and of auditors of parish accounts, in certain parishes of *England* and *Wales*; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That this act and the several provisions thereof shall apply to and may be adopted, under and subject to the regulations herein contained, by any parish or parishes in *England* and *Wales*.

Act may be adopted by any parish.

II. And be it further enacted, That when in any parish certain of the rate-payers thereof may desire that the said parish should come under the operation of this act, then and in that case any number of rate-payers amounting at least to one-fifth of the rate-payers of such parish, or any number of rate-payers amounting at least to fifty parishioners, may, on some day between the first day of *December* and the first day of *March*, deliver a requisition, by them signed, and describing their places of residence, to the churchwardens, or to one of them, serving for the said parish, requiring of the said churchwardens to ascertain according to the manner herein-after mentioned, whether or not a majority of the rate-payers of the said parish do wish and require that this act and the provisions thereof should be adopted therein; and which requisition may be in the form or to the tenor and effect following; (that is to say,)

Manner of adopting it in parishes where inhabitants do not assemble in open vestry.

'To the Churchwardens of the Parish of [insert here the name of the Parish.]

Form of requisition.

'We, whose names are hereunto subscribed, being rate-payers resident in the said parish, and respectively rated or assessed to the relief of the poor thereof, do hereby require you the said churchwardens to ascertain and determine the adoption or non-adoption of an act of the second year of the reign of King *William* the Fourth, chapter , intituled *An Act* [here insert the title of the act.]

'Dated this day of in the year of our Lord

III. And be it further enacted, That the said churchwardens of the said parish shall on the first *Sunday* in the month of *March* next after the receipt of such requisition affix or cause to be affixed a notice to the principal doors of every church and chapel within the said parish, specifying some day not earlier than ten days and not later than twenty-one days after such *Sunday*, and at what place or places within the said parish, the rate-payers are required to signify their votes for or against the adoption of this act; which votes shall be received on three successive days, commencing at eight of the clock in the forenoon, and ending at four of the clock

Upon receipt of requisition churchwarden to give notice of time and place for receiving votes.

in the afternoon of each day; and the said notice shall be to the following effect :

Form of notice.

‘The churchwardens of this parish [*insert here the name of the parish*] having received a requisition duly signed according to the provisions of an act of the second year of the reign of *William the Fourth*, chapter , for the better regulation of vestries, the rate-payers of this parish of [*insert here the name of the parish*] are hereby required, all and each of them, on the day of next, and the two following days, to signify to the said churchwardens by a declaration, either printed or written, or partly printed or partly written, addressed and delivered to one of the churchwardens at [*insert here the place*] their votes for or against the adoption of the aforesaid act for the better regulation of vestries by the rate-payers of this parish.

‘(signed) churchwardens.”

Form of declaration.

IV. And be it further enacted, That the said declaration shall be to the following effect :

‘I A. B. of street [or place or house] in this parish of vote [for or against as the case may be,] the adoption of the act of the second year of the reign of *William the fourth*, chapter , for the better regulation of vestries by this parish.’

Churchwardens to declare whether the votes are in favour of adopting this act.

V. And be it further enacted, ‘That the said churchwardens shall carefully examine the votes to them delivered as aforesaid, and shall compare them with the last rate made for the relief of the poor of the said parish, and shall be empowered to call before them and examine any parish officers touching the said votes, or any rate-payer so giving his vote, and after a full and fair summing-up of the said votes shall, by public notice according to the form and manner herein-after prescribed, declare whether or not two thirds of the votes given have been given in favour of the adoption of the said act : Provided always, that the whole number of persons voting shall be a clear majority of the rate-payers of the parish : Provided also, that the adoption or non-adoption of this act shall be decided by such number of votes as aforesaid.

Rate-payers may inspect votes.

VI. Provided always, and be it further enacted, That any of the rate-payers of the aforesaid parish, not exceeding five together, may inspect, at or in the vestry room, or in some convenient place within the same parish, and they are hereby empowered to inspect the votes so given for and against the adoption of this act, at all seasonable times within one month after such notice shall have been given ; and the churchwardens of the said parish are hereby required carefully to preserve the said votes, and freely to permit and allow the examination thereof by the aforesaid rate-payers of the said parish at such seasonable times within the period aforesaid.

No person to vote unless he has been rated one year.

VII. Provided always, and be it enacted, That no person shall be deemed a rate-payer, or be entitled to vote, or do any other act, matter; or thing as such under the provisions of this act, unless he or she have been rated to the relief of the poor for the whole year immediately preceding his so voting or otherwise acting as such rate-payer, and shall have paid all the parochial rates, taxes, and assessments due from him or her at the time of so voting or acting, except such as have been made or become due within the six months immediately preceding such voting.

VIII. And be it further enacted, That notice of the adoption of this act by any parish shall be forthwith given by the churchwardens for the time being of the said parish in the *London Gazette* and in one or more of the public newspapers circulating in the county in which the said parish may be situated, and by affixing a notice of the same to the principal doors of every church and chapel within the said parish; which notice shall be to the following effect:

Notice of adoption of the act.

‘Parish of [here insert name of parish].’

‘Notice is hereby given, That the above-named parish has adopted the act of the second year of the reign of King William the Fourth, chapter , intituled *An Act* [here insert the title of the Act]; and that the numbers of the majority and minority of votes given for and against the adoption of the said act are as follows; that is to say, votes for the adoption thereof, and votes against the adoption thereof.

‘Dated this day of in the year of our Lord

‘(signed) Churchwardens.’

IX. Provided always, and be it further enacted, That if the rate-payers shall determine, in the manner as aforesaid, against the adoption of this act, then and in that case it shall not be lawful to make another requisition for the same purposes within three years after such determination.

No similar requisition to be made within three years.

X. And be it further enacted, That in any parish in which public notice of the adoption of this act in the manner as aforesaid shall be so made and given, this act shall immediately become the law for electing vestrymen and auditors of accounts of the said parish in manner herein-after mentioned.

This act to take effect in all parishes in which its adoption has been notified.

XI. And be it further enacted, That if any churchwarden, rate-collector, overseer, or other parish officer shall refuse to call meetings according to the provisions of this act, or shall refuse or neglect to make and give the declarations and notices directed to be made and given by this act, or to receive the vote of any rate-payer as aforesaid, or shall in any manner whatsoever alter, falsify, conceal, or suppress any vote or votes as aforesaid, such churchwarden, rate-collector, overseer, or other parish officer, shall be deemed and taken to be guilty of a misdemeanor.

Penalties on churchwardens and others refusing to call meetings, &c.

XII. And be it further enacted, That on some Sunday at least twenty-one days previously to the day of annual election of vestrymen, notice of election, pursuant to this act, signed by the churchwardens, shall be affixed to the principal doors of every church and chapel of the said parish, and at other usual places, in in the following terms:

Notices of election to be given.

‘Parish of [here insert Name of Parish].’

‘The parishioners duly qualified according to the provisions of the act of the second year of the reign of King William the Fourth, intituled *An Act* [here insert the title of the act], are hereby required to meet at on the day of conformably to the provisions of the said act, and then and there to consider of and elect fit and proper persons to be vestrymen and auditors of accounts of the parish of for the ensuing year: that is to say,

Members of the Vestry.
Auditors of Accounts.

Rate-collectors, &c. may be summoned to assist at the election.

XIII. And be it further enacted, That the churchwardens may summon the rate-collectors to attend them on the said day of annual election, in order to assist them in ascertaining that the persons presenting themselves to vote are parishioners rated to the relief of the poor of the said parish, and duly qualified to vote at the said election.

Form of proceeding at annual elections.

XIV. And be it further enacted, That on the day of annual election for vestrymen and auditors in any parish adopting this act, each parishioner then rated, and having been rated to the relief of the poor one year, desirous of voting, do meet at the place appointed for such election, then and there to nominate eight rate-payers of the said parish as fit and proper persons to be inspectors of votes, four of such eight to be nominated by the churchwardens, and the other four to be nominated by the meeting; and after such nomination the said parishioners shall elect such parishioners duly qualified as may be there proposed for the offices of vestrymen and auditors; and the chairman shall at such meeting declare the names of the parishioners who have been elected by a majority of votes at such meeting.

A ballot may be demanded.

XV. Provided always, and be it further enacted, That any five rate-payers may then and there, in writing or otherwise, demand a poll, which shall be taken by ballot, each rate-payer delivering to the aforesaid inspectors two folded papers, one of which papers shall contain the names of the persons for whom such parishioner may vote as fit and proper to be members of the vestry, and the other shall contain the names of the persons for whom such parishioner may vote as fit and proper to be auditors of accounts: Provided always, that each rate-payer shall have one vote and no more for the members of the vestry, and one vote and no more for the auditors of accounts to be chosen in the said parish.

Mode of voting.

XVI. And be it further enacted, That the inspectors of votes shall deposit the said folded lists, without previously opening the same, in two separate sets of balloting glasses or boxes, one set for the vestry lists, and another for the auditors lists; and that the said balloting glasses or boxes shall be closed at the time fixed for the termination of the voting, that is, at four of the clock of the afternoon of the last day of election.

Duty of inspectors.

XVII. And be it further enacted, That after the close of the said ballot the aforesaid inspectors shall proceed to examine the said votes, and if necessary shall continue the examination by adjournments from day to day, not exceeding four days, *Sunday* excepted, until they shall have decided upon the persons duly qualified according to the provisions of this act who may have been chosen to fill the aforesaid offices.

In case of equality of votes.

XVIII. And be it further enacted, That if an equality of votes should appear to the aforesaid inspectors to be given for any two or more persons to fill any or either of the said offices, in that case the inspectors shall decide by lot upon the person or persons so to be chosen.

Penalty for forging or falsifying any voting list, or obstructing the election.

XIX. And be it further enacted, That if any person do forge or in any way falsify any name or writing in any paper or list purporting to contain the vote or votes of any parishioner as aforesaid so voting for vestrymen or auditors, or do by any contrivance attempt to obstruct or prevent the purposes of such mode of election, the

persons so offending shall, upon information laid, and conviction before any two or more justices of the peace having jurisdiction in the parish so adopting this act, be liable to a penalty of not less than ten and not more than fifty pounds, and in default of payment thereof shall be imprisoned for a term not exceeding six nor less than three months; and any fine so levied shall be given, half to the informer who shall have informed against the person so offending, and the other half to the poor of the parish in which the said offence shall have been committed.

XX. And be it further enacted, That the aforesaid inspectors shall, immediately after they shall have decided upon whom the aforesaid elections have fallen, deliver to the churchwardens, or to one of them, serving for the parish so adopting this act, a list of the persons chosen by the parishioners to act as vestrymen and auditors of accounts; and the said list, or a copy thereof, shall be affixed to the doors of the churches and chapels or other places chosen for the purposes of public notice in the said parish.

Public notice to be given of vestrymen and auditors chosen by parishioners.

XXI. And be it further enacted, That if any inspector as aforesaid shall wilfully make or cause to be made an incorrect return of the said votes, every such offender shall, upon information laid by any person before two or more justices of the peace having jurisdiction in the said parish, and upon conviction for such offence, be liable to a penalty of not less than twenty-five pounds and not exceeding fifty pounds.

Penalty on inspector for making incorrect return.

XXII. And be it further enacted, That in all parishes adopting this Act the meeting of parishioners for the election of the vestrymen and auditors of accounts by the parishioners shall take place in the month of *May* in every year: Provided always, that when a ballot is demanded at such election the same shall commence on the following day, and continue for three successive days, commencing at eight of the clock in the forenoon and closing at four of the clock in the afternoon on each day: Provided also, that the day on which such elections shall commence shall in the first instance be appointed by the churchwardens of the parishes adopting this act, but in every subsequent year shall be appointed by the vestry: Provided always, that when by reason of the populousness of any parish the said parish shall have been or shall be divided into districts for ecclesiastical or other purposes, then and in that case the said votes shall be taken, according to the aforesaid mode of the election, in some convenient place, at the discretion of the churchwardens, in each of the several districts of the said parish.

Elections to be annual.

XXIII. And be it further enacted, That in all parishes adopting this act the vestry appointed and elected as herein-before mentioned shall, when the said act shall come in full effect, consist of a certain number of resident householders; that is to say, twelve vestrymen for every parish in which the number of rated householders shall not exceed one thousand; and twelve other additional vestrymen, that is, twenty-four vestrymen, for every parish in which the rated householders shall exceed one thousand; and twelve other additional vestrymen, that is, thirty-six vestrymen, for every parish in which the number of rated householders shall exceed two thousand; and so on at the proportion of twelve additional vestrymen for every thousand rated householders: Provided always, that in no case

Vestry to consist of not less than 12 nor more than 120 householders.

the number of vestrymen shall exceed one hundred and twenty: provided always, that in any parish wherein a greater number of vestrymen are given by special act of parliament than the proportions aforesaid will amount to, that then the number of vestrymen shall remain the same as given by such act of parliament; and provided always, that the rector, district rectors, vicar, perpetual curate, and churchwardens of the said parish shall constitute a part of the said vestry, and shall vote therein, in addition to the vestrymen as aforesaid elected under this act: Provided always, that no more than one such rector or other such minister as aforesaid, from any one parish or ecclesiastical district as aforesaid, shall *ex officio* be a part of or vote at any vestry meeting.

Proportion of existing vestry to go out of office at each of three first elections under this act.

XXIV. And be it further enacted, That at the first election for vestrymen after the adoption of this act in any parish, one third of the then existing vestry, or the nearest number thereto, but not exceeding the same, shall retire from office, (such portion to be determined by lot,) and the parishioners duly qualified shall elect a number of vestrymen equal to one third of the vestry, to be chosen according to the provisions of this act; and that on the next ensuing annual election for vestrymen one half, or as nearly as may be one half, of the remaining part of the first aforesaid vestry shall retire from office, (such portion to be determined by lot,) and the parishioners duly qualified shall again elect a number of vestrymen equal to one third of the vestry, to be chosen according to the provisions of this act; and that on the next, that is to say, the third annual election for vestrymen, the last remaining portion of the vestry as aforesaid shall retire from office, and the parishioners duly qualified shall elect vestrymen in like manner and number as at the two preceding elections, so as to fill up the vestry to the exact number of vestrymen prescribed by this act.

Vestrymen to quit office after three years, and one third of the whole number to be elected annually.

XXV. And be it further enacted, That at every subsequent annual election those vestrymen who have been three years in office shall go out of office, and the parishioners shall elect, according to the provisions of this act, other vestrymen, to the number of one third of the total number of which such vestry shall consist, as also fill up any vacancies which may have occurred from death or other causes: Provided always, that any or all of the vestrymen so going out by rotation may be immediately eligible for re-election.

Qualifications of vestrymen.

XXVI. And be it further enacted, That the vestry elected under this act in any parish not within the metropolitan police district or the City of London shall consist of resident householders rated or assessed to the relief of the poor upon a rental of not less than ten pounds; and no person shall be capable of acting as one of the said vestry unless he shall be the occupier of a house, land, tenements, or hereditaments rated or assessed upon the aforementioned amount of rental within the parish for which he is to serve: Provided always, that if the parish adopting this act should be within the metropolitan police district or the City of London, or if the resident householders therein should amount to more than three thousand, then and in that case the vestry elected under this act shall consist of resident householders rated or assessed to the relief of the poor of such parish upon a rental of not less than forty pounds *per annum*.

XXVII. And be it further enacted, That from and after the adoption of this act in any parish, the vestry shall exercise the powers and privileges held by any vestry now existing in such parish, and the authority of such vestry may be pleaded before any justice or justices of the peace, or in any court of law, in regard to all parochial property, or monies due, or holdings or contracts, or other documents of the like nature, formerly under the controul or in the keeping of the said vestry of the said parish; and all parish officers or boards shall account to them in like manner as they have accounted to the said vestry: Provided always, that nothing in this act shall be deemed, construed, or taken to repeal, alter, or invalidate any local act for the government of any parish by vestries, or for the management of the poor by any board, of directors and guardians, or for the due provision for divine worship within the parish, and the maintenance of the clergy officiating therein, otherwise than is by this act expressly enacted regarding the election of vestrymen and auditors of accounts.

Vestries appointed after the adoption of this act to exercise the authority of former vestries.

Not to affect local acts regarding vestries, divine worship, &c., except as herein expressed.

XXVIII. And be it further enacted, That all powers or duties to be performed by the vestry of any parish adopting this act may be exercised and performed respectively by the major part of such vestry assembled at any meeting, there not being less than five vestrymen present at a meeting of a vestry which consists of twelve or more elected vestrymen and not exceeding twenty-three, and not being less than seven vestrymen present at a meeting of a vestry which consists of twenty-four or more elected vestrymen and not exceeding thirty-five, and not being less than nine vestrymen present at a meeting of a vestry which consists of thirty-six elected vestrymen or upwards; and all orders and directions given and all contracts and engagements entered into by the vestrymen present at any such meeting, or the major part of them then assembled, shall be as valid and effectual as if the same were done by all the said vestrymen for the time being, and shall be binding and conclusive on all such vestrymen, provided that the same is confirmed at the next subsequent meeting of the vestry.

The acts of a quorum of the vestry at any meeting to be considered as the acts of the vestry.

XXIX. And be it further enacted, That in any case in which the vestry room of any parish in any city or town shall not be sufficiently large and commodious for any vestry meeting, such meeting shall be held elsewhere within the said parish or place, but not in the church or chapel thereof.

Meetings not to be held in the church.

XXX. And be it further enacted, That at every meeting of any vestry, in the absence of the persons authorized by law or custom to take the chair, the members present shall elect a chairman for the occasion before proceeding to other business.

Meeting to elect a Chairman.

XXXI. And be it further enacted, That the vestry of every parish adopting this act shall cause to be provided and kept a proper book or books, and proper entries to be made therein of the names of the several vestrymen who shall attend the respective meetings of the vestry, and of all orders and proceedings made or taken at such meetings; and all such books shall at all reasonable times be open to the inspection of the said vestrymen, and of any person rated or assessed to the relief of the poor of the said parish, and of any creditor on the rates of the said parish, without fee or reward; and the said vestrymen, persons, and creditors, or any of them, shall and may take copies of or extracts from such books respectively,

Proceedings to be entered in books to be open to inspection.

without paying any thing for the same ; and in case the clerk to the said vestry, or other person having the care of such books, shall refuse to permit or shall not permit the said vestrymen or such persons or creditors to inspect the same, or to take such copies or extracts as aforesaid, such clerk or other person shall forfeit and pay any sum of money not exceeding ten pounds for every such offence.

Account books to be kept, and be open to inspection.

XXXII. And be it further enacted, That the said vestry shall and they are hereby required to cause a book or books to be provided and kept, and true and regular accounts to be entered therein of all sums of money received and disbursed for or on account of parochial purposes, and of the several articles, matters, and things for which such sums of money shall have been so received and disbursed ; which book or books shall at all seasonable times be open to the inspection of the said vestrymen, and of any person or persons rated to the relief of the poor of the said parish, and of any creditor or creditors on the same, without fee or reward ; and the said vestrymen and persons and creditors as aforesaid, or any of them, shall and may take copies of or extracts from the said book or books, or any part or parts thereof, without paying any thing for the same ; and in case the clerk to the said vestrymen, or other person with whom such books shall remain, shall on any reasonable demand refuse to permit or shall not permit the said vestrymen, persons, or creditors, or any of them, to inspect the said book or books, or to take such copies or extracts as aforesaid, such clerk or other person as aforesaid shall forfeit and pay any sum not exceeding ten pounds for every such offence.

Auditors to be chosen annually.

XXXIII. And be it further enacted, That in any and every parish adopting this act the parishioners duly qualified to vote for vestrymen as aforesaid shall elect five rate-payers of the said parish who shall have signified in writing their assent to serve to be auditors of accounts, which auditors shall be so elected on the first day on which the vestrymen shall be chosen after such parish shall have adopted this act, and according to the same forms of voting as are herein-before prescribed for the election of the said vestry : Provided always, that no person shall be eligible to fill the said office of auditor of accounts who shall not be qualified according to the provisions of this act, as herein-before stated, to fill the office of vestryman for the said parish ; and provided always, that no person shall be eligible to fill the said office of auditor of accounts who shall be one of the vestry for the said parish ; and if any person on the day of annual election shall be chosen to be both a member of the vestry and an auditor of accounts, the said vestry at their first meeting after such election shall declare the said person incapable of acting as vestryman : Provided also, that no person shall be eligible to fill the said office of auditor of accounts who shall be interested, either directly or indirectly in any contract, office, business, or employ, or in providing or supplying any materials or articles for the parish for which he is to serve ; and any person who shall be discovered, after his election, to be so interested, shall cease to be an auditor.

Qualification.

Further qualifications of auditors.

Disqualifications.

Mode of audit.

XXXIV. And be it further enacted, That the aforesaid auditors of accounts shall meet twice at least in each year, at the board room of the vestry, and (a majority of the said auditors being present at such meetings) shall proceed to audit the accounts of the said vestry for the preceding half year, in presence of the vestry clerk ; and the

said vestry are hereby required, by their said clerk, to produce and lay before the said auditors at every such meeting a true and just statement or account in writing, accompanied with proper vouchers, of all sums of money which may have come to the hands of the said vestry or of their treasurer, and also of all monies paid, laid out, or expended by them, or by any churchwardens, overseers, surveyors, or other persons by them employed, and responsible to the said vestry, since the last period up to which the accounts of the said vestry were audited; and in all parishes in which other boards shall have controul over any part of the parochial expenditure, the said auditors shall have the same power of examining the accounts and officers thereof as of examining the accounts and officers of the vestry, and shall audit the accounts of the said boards in the same manner as they audit the accounts of the said vestries.

XXXV. And be it further enacted, That the said auditors shall have power to summon and call before them, by a writing for that purpose signed by any one of them, or by the clerk of the vestry of any parish adopting this act, any parish officer or other person or persons whatsoever concerned in the said accounts, and to require of him or her or them to attend the said auditors at any meeting or adjourned meeting, and to bring with them all books of accounts, writings, papers, and documents required, which may concern the said accounts, and to give such information as to the particulars of such accounts as he, she, or they shall be enabled to give; and any parish officer or other person refusing so to attend, or otherwise wilfully obstructing the purposes of such inquiry, shall be deemed guilty of a misdemeanor.

Auditors may call for persons and books.

XXXVI. And be it further enacted, That the said accounts, when audited and approved by the said auditors, or by the major part of them, shall be by them signed in the presence of the clerk of the aforesaid vestry of any parish adopting this act, and the said clerk of the vestry shall also affix his signature to the same; and it shall be lawful for the aforesaid auditors to subjoin such remarks thereto as to them shall seem meet.

Accounts to be signed by auditors.

XXXVII. And be it further enacted, That the said accounts, when so audited and signed, shall remain at the office of the clerk of the said vestry; and that the said accounts shall after such audit be open and accessible for the examination, at all seasonable times, of any person rated to the relief of the poor of the said parish, and of any creditor on the rates thereof; provided always that nothing in this act contained relative to the appointment and duty of auditors shall debar the parishioners from any remedy by them before possessed by the law of the land.

Accounts after audit, to be open to inspection.

XXXVIII. And be it further enacted, That an abstract of the accounts of all monies received and disbursed by the vestry in any parish adopting this act shall twice in every year, within fourteen days after the same shall have been audited in manner in this act mentioned, be made out by the said vestry, either in writing or in print, and a copy of such abstract shall be delivered to all person applying for the same, and rated or assessed to the relief of the poor of the said parish, such person paying one shilling for the same; and which copies the said clerk is hereby required to cause to be published either in writing or print, and distributed accordingly.

Abstract of accounts to be published fourteen days after being audited.

XXXIX. And be it further enacted, That in any parish adopting this act, the vestry shall cause to be made out, once at least in every Vestry to make out and p

yearly a list of estates, charities, and bequests, &c. with the application thereof.

year, a list of the several freehold, copyhold, and leasehold estates, and of all charitable foundations and bequests, if any, belonging to the said parish and under the controul of the said vestry, the said list to contain a true and detailed account of the place where such estate or charitable foundation may be situate, or in what mode and security such bequest may be invested, specifying also the yearly rental of each, and the particular appropriation thereof, together with the names of the persons partaking of their benefit (except where such benefit shall be allotted to the poor of the parish generally), and to what amount in each case, and also stating the name and description of the persons in whom such estates are vested, and the names and descriptions of the trustees for each charity: Provided always, that the aforesaid list shall be open for the inspection of the rate-payers, at the office of the vestry clerk, at the same time with the accounts when audited according to the provisions of this act.

Saving of ecclesiastical jurisdiction.

XL. Provided always, and be it further enacted, That this act or any thing therein contained shall not extend or be construed to extend to invalidate or avoid any ecclesiastical law or constitution of the church of *England*, save and except so far as concerns the appointment of vestries, or to destroy any of the rights or powers belonging to the archbishops, bishops, deans, or other of the clergy of the said established church, either as individuals or as corporate bodies, or in anywise to abridge or controul their ordinary jurisdiction over or relating to any matter or thing respecting the ministers thereof.

Meaning of terms used in this act.

XLI. And in order to remove doubts as to the meaning of certain words in this act, be it enacted, That the word "justice" shall be deemed to mean justice of the peace; and that the words "person" and "party" shall be deemed to include any number of persons or parties; and that the words "justices of the peace of the county or city" shall be deemed to include justices of the peace of any division of a county, liberty, division of a liberty, precinct, county of a city, county of a town, cinque port, or town corporate; and that the word "parish" shall be deemed to include any liberty, precinct, township, hamlet, tithing, vill, extra-parochial place, or any place maintaining its own poor; and that the word "rate-payers" shall include "ley-payers;" and that the meaning of the several words in this act shall not be restricted, although the same may be subsequently referred to in the singular number or masculine gender only.

As to affixing notices.

XLII. And be it further enacted, That the words "church or chapel," insomuch as regards the affixing of notices as by this act directed, shall be deemed to include all places of religious worship according to the forms of the established church; and that in any parish or place not having a parish church or chapel as aforesaid, the said notices shall be affixed to some public building within the limits of the said parish or place.

Act not to extend to parishes where not more than 800 rate-payers, except in cities or towns.

XLIII. Provided always, and be it further enacted, That nothing in this act contained shall extend to any parish not being within or being part of any city or town, in which parish there shall not be a greater number than eight hundred persons rated as householders, and having paid the rates for the relief of the poor within the year preceding that in which the provisions of this act may be desired to be put in execution within such parish.

Public act.

XLIV. And be it further enacted, That this act shall be deemed and taken to be a public act, and shall be judicially taken notice of

as such by all judges, justices, and others, without the same being specially pleaded.

2 W. 4. c. 42.

An Act to authorize (in Parishes inclosed under any Act of Parliament) the letting of the Poor Allotments in shall Portions to industrious Cottagers. [1st June 1832.]

Whereas in parishes inclosed under acts of parliament there are in many cases allotments made for the benefit of the poor, chiefly with a view to fuel, which are now comparatively useless and unproductive : And whereas it would tend much to the welfare and happiness of the poor if those allotments could be let at a fair rent and in small portions, to industrious cottagers of good character while the distribution of fuel might be augmented by appropriating the said rents to the purchase of an additional quantity ; be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That it shall and may be lawful for the trustees of the said allotments, together with the churchwardens and overseers of the poor, in parish vestry assembled, and they are hereby required, to let portions of any such allotment, not less than one fourth of a statute acre, and not exceeding one such acre to any one individual, according to their discretion, as a yearly occupation from *Michaelmas* to *Michaelmas*, (and at such rent as land of the same quality is usually let for in the said parish,) to such industrious cottagers of good character, being day labourers or journeymen legally settled in the said parish, and dwelling within or near its bounds, as shall apply for the same in the manner herein-after mentioned.

Trustees and parish officers in vestry assembled may let portions of poor allotments to industrious cottagers.

II. Provided also, and be it further enacted, That the person hiring the same shall be held bound to cultivate it in such a manner as shall preserve the land in a due state of fertility.

Land to be duly cultivated.

III. And be it further enacted, That for the purpose of carrying this act into effect a vestry shall be held in the first week in September in every year, of which ten days notice shall be given in the usual manner, at which vestry the trustees of the said allotments may attend and vote, if they shall so think fit, and at which vestry, or some adjournment thereof, any industrious cottager of good character who may desire to rent such portion of land as aforesaid may apply for the same ; and the said vestry are hereby required, taking into consideration the character and circumstances of the applicant, to determine the case, either by rejecting his application, or by making an order that he shall be permitted to occupy such portion of the poor allotment, being not less than one fourth of a statute acre nor exceeding one such acre, as the said vestry in their discretion shall determine, and upon the terms herein-before enacted ; and the said order of vestry shall be held to all intents and purposes to be a sufficient title and authority to such applicant to enter into the occupation of such land at the time therein appointed.

Vestry to be held annually to receive applications.

Order of vestry to authorize occupation.

Payment of
rent.

IV. Provided always, and be it further enacted, That the rent shall be reserved and payable to the churchwardens and overseers of the poor, on behalf of the vestry, in one gross sum for the whole year, and shall be paid to one or either of them at the end of the year's occupation.

If rent is in
arrear, or land
not duly culti-
vated, tenant
may be evicted.

V. And be it further enacted, That if the rent of such portion of land shall at any time be four weeks in arrear, or if at the end of any one year of occupation it shall be the opinion of the vestry that the land has not been duly cultivated, so as to fulfil the useful and benevolent purposes of this act, then and in such case the churchwardens and overseers of the poor, or any or either of them, with the consent of the vestry, may serve a notice to quit upon the occupier of such portion of land; whereupon the said occupier shall deliver up possession of the same to the churchwardens and overseers aforesaid, or any or either of them, within one week after the said notice has been duly served upon him.

Power to re-
cover possession
of land illegally
held over, by
summary pro-
cess.

VI. And be it further enacted, That if any person to whom such portion of land as aforesaid shall have been let, for his or her own occupation, shall refuse to quit and to deliver up possession thereof when thereto required according to the terms of this act, or if any other person or persons shall unlawfully enter upon or take or hold possession of any such land, it shall be lawful for the churchwardens and overseers of the poor, or any or either of them, to exhibit a complaint against the person so in possession of such land before two of His Majesty's justices of the peace, who are hereby authorized and required to issue a summons, under their hands and seals, to the person against whom such complaint shall be made, to appear before them at a time and place appointed therein; and such justices are hereby required and empowered, upon the appearance of the defendant before them, or upon proof on oath that such summons has been duly served upon him, or left at his usual place of residence, or if there should have been any difficulty in finding such usual place of residence, then upon proof on oath of such difficulty, and that such summons has been affixed on the door of the parish church of the said parish in which such land is situated, and in any extra-parochial place on some public building or other conspicuous place therein, to proceed to hear and determine the matter of such complaint; and if they shall find and adjudge the same to be true, then by warrant under their hands and seals to cause possession of the land in question to be delivered to the churchwardens and overseers of the poor, or to any one of them.

Arrears of rent
how to be re-
covered.

VII. And be it further enacted, That all arrears of rent for the said portions of land shall be recoverable by the churchwardens and overseers of the poor, or any of them, on behalf of the vestry, by application to two of His Majesty's justices of the peace in petty sessions assembled, who shall thereupon summon the party complained against, and after hearing what he has to allege, should they find any rent to be due, they are required to issue a warrant under their hands and seals to levy the same upon the goods and chattels of the person from whom the said rent shall be due and owing.

Application of
rent.

VIII. And be it further enacted, That the rent of the said portions of land shall be applied by the vestry in the purchase of fuel, to be distributed in the winter season among the poor parishioners legally settled and resident in or near the said parish.

IX. And be it further enacted, That if any of the said allotments shall be found to lie at an inconvenient distance from the residences of the cottagers, it shall be lawful for the vestry, by an order made to that effect, to let such allotment, or any part thereof; for the best rent that can be procured for the same, and to hire in lieu thereof, for the purposes of this act, land of equal value, more favourably situated.

Power to exchange, for greater convenience of cottagers.

X. And be it further enacted, That no habitations shall be erected on the portions of land demised under this Act, either at the expence of the parish or by the individuals renting the same.

No habitations to be erected.

XI. And whereas by two acts of the first and second years of the reign of His present Majesty, intituled "*An Act to amend an Act of the Fifty-ninth Year of His Majesty King George the Third, for the Relief and Employment of the Poor*," and the other intituled, "*An Act to enable the Churchwardens and Overseers to inclose Lands belonging to the Crown, for the Benefit of poor Persons residing in the Parish in which such Crown Land is situated*," power is given, under certain restrictions, to inclose any quantity not exceeding fifty acres of waste land and crown land respectively, for the use and benefit of the poor; be it further enacted, That in any parish where such inclosure shall exist or shall hereafter take place, or where land shall in any other manner be found appropriated for the general benefit of the poor of any parish, then and in such cases the powers and provisions of this act shall be held to apply, in so far as the same may be found applicable.

Extending powers and provisions of this act to 1 & 2 W. 4. c. 42. and c. 59.

2 & 3 W. 4. c. 96.

An Act for the better Employment of Labourers in Agricultural Parishes until the Twenty-fifth day of March One thousand eight hundred and thirty-four. [9th August 1832.]

Whereas notwithstanding the many laws in force for the relief and employment of the poor many able-bodied labourers are frequently entirely destitute of work or unprofitably employed, and in many instances receive insufficient allowance for their support from the poor rates: And whereas the mode of providing employment for the poor which may be expedient in some parishes may be inexpedient in others, and it may therefore be desirable to extend the powers of parish vestries in order that such a course may be pursued as may be best adapted to the peculiar circumstances of each parish: And whereas by an act passed in the fifty-eighth year of the reign of His late Majesty King George the Third, intituled *An Act for the Regulation of Parish Vestries*, provision is made to regulate the manner of voting therein: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the first day of October next, whenever at a meeting of a parish vestry, convened according to the provisions and directions of an act passed in the fifty-eighth year of the reign of King George the Third, intituled *An Act for the Regulation of Parish Vestries*, a majority of three fourths of the rate payers of, any parish, township, vill, or place maintaining its own poor, the votes being taken according to the

58 G. 3. c. 69.

Agreements made in vestry and approved of by justices, to be binding the rate payers.

provisions of the said act, shall come to any agreement solely for the purpose of employing or relieving the poor of such parish, township, vill, or place, such agreement shall forthwith be reduced into writing, and shall be submitted to the justices of the peace assembled at the petty sessions then next holden in and for the division, hundred, or riding in which the said parish, township, vill, or place shall be situate; and in case such agreement shall be approved of by a majority of such justices at such petty sessions, such approbation shall be signified by their signatures thereto; and such agreement shall be binding on the contributors to the poor rates of the said parish, township, vill, or place for any period not exceeding six calendar months, as may be specified in such agreement.

Appeal to the
quarter sessions.

II. And be it further enacted, That if any person shall think himself, herself, or themselves aggrieved by any thing done in pursuance of this act, then and in every such case he, she, or they may appeal to the general or quarter sessions of the peace to be holden for the county or district where the cause of complaint shall have arisen, at their next ensuing meeting; and the justices in such sessions assembled are hereby required to hear and determine the matter of such appeal, and to make such alterations in such agreement, and to make such order therein, and to award such costs, as to them shall seem just and reasonable, and by their order and warrant to levy such costs by distress and sale of the goods and chattels of the party made liable to pay the same; and every order and determination of the said justices upon such appeal shall be final and conclusive on all parties concerned, and shall not be removed or be removable, by certiorari or by any other writ or process whatsoever, into any of His Majesty's courts of record at *Westminster* or elsewhere; but in case any appeal shall appear to the said justices frivolous or vexatious, then the said justices shall cause such costs to be paid by the appellant or appellants as to them shall seem reasonable, and such costs shall be levied in manner aforesaid.

Agreement to
be acted upon
until the appeal
is determined.

III. Provided also, and be it enacted, That notwithstanding notice of appeal against any such agreement so approved of by such justices at their petty sessions, or against any part thereof, such agreement shall and may be acted upon in such and the like manner as if no such notice of appeal had been given, until such appeal shall have been determined by such justices at such general or quarter session; and such justices may, in case they shall think right, award such damages to be paid out of the poor rates of such parish, township, vill, or place concerned in such appeal to the person or persons aggrieved.

Act not to
sanction the
making up de-
ficiency of
wages.

IV. And whereas in many parishes, townships, vills, and places it has been the custom to pay to labourers and others less than the common rate of wages for their labour, and to make up the deficiency from the poor rates; be it therefore enacted, That nothing herein contained shall extend so as in any way to legalize or sanction any such proceeding.

Rates not to be
applied for pay-
ment of labour
out of parish.

V. Provided also, and be it enacted, That it shall not be lawful for the churchwardens and overseers of any parish, township, vill, or place to disburse or expend any money raised for the relief of the poor of such parish, township, vill, or place, in the employment of any person or persons in any other parish, township, vill, or place, in any agricultural labour, or in any other work whatever.

VI. And be it further enacted, That this act shall not extend to any city or town containing more than one parish, nor to any parish, township, vill, or place where the rates for the relief of the poor shall not exceed five shillings in the pound on the full or rack rental thereof.

Act not to extend to certain places.

VII. Provided always, and be it enacted, That all the directions herein contained shall extend and be construed to extend (save and except as herein excepted) to all parishes, townships, vills, and places having separate overseers of the poor and maintaining their poor separately; and all the directions and regulations contained (save and except as aforesaid) shall extend to all vestry meetings which may by law be holden by the inhabitants of such parish, township, vill, or place.

Act to extend to all parishes (except as before excepted) having separate Overseers.

VIII. Provided nevertheless, and be it enacted, That nothing in this Act contained shall be construed to alter, abridge, or affect any of the provisions contained in an act passed in the twenty-second year of the reign of King George the Third, intituled *An Act for the better relief and employment of the poor*.

Nothing herein to affect 22 G. 3. c. 83.

IX. And be it further enacted, That this act shall commence and take effect from and after the first day of *October* next, and shall continue in force until the twenty-fifth day of *March* one thousand eight hundred and thirty-four.

Commencement of act.

3 & 4 W. 4. c. 30.

An Act to exempt from Poor and Church Rates all Churches, Chapels, and other places of Religious Worship.

[24th July 1833.]

Whereas it is expedient that churches, chapels, and other places exclusively appropriated to public religious worship should be exempt from the payment of poor and church rates: Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the first day of *October* one thousand eight hundred and thirty-three no person or persons shall be rated or shall be liable to be rated, or to pay to any church or poor rates or cesses, for or in respect of any churches, district churches, chapels, meeting houses, or premises, or such part thereof as shall be exclusively appropriated to public religious worship, and which (other than churches, district churches, and episcopal chapels of the established church) shall be duly certified for the performance of such religious worship according to the provision of any act or acts now in force: Provided always, that no person or persons shall be hereby exempted from any such rates or cesses for or in respect of any parts of such churches, district churches, chapels, meeting houses, or other premises which are not so exclusively appropriated, and from which parts not so exclusively appropriated such person or persons shall receive any rent or rents, or shall derive profit or advantage.

No persons liable to be rated for places exclusively appropriated to public religious worship.

proviso respecting places not so exclusively appropriated.

II. Provided always, and be it enacted, That no person or persons shall be liable to any such rates or cesses because the said

Persons not liable to rates

because part of premises may be used for schools.

churches, district churches, chapels, meeting houses, or other premises, or any vestry rooms belonging thereto, or any part thereof, may be used for *Sunday* or infant schools, or for the charitable education of the poor.

3 & 4 W. 4. c. 40.

An Act to repeal certain Acts relating to the Removal of poor Persons born in Scotland and Ireland, and chargeable to Parishes in England, and to make other Provisions in lieu thereof, until the first day of May, One thousand eight hundred and thirty-six, and to the end of the then next Session of Parliament.

[14th August 1838.]

So much of 17 G. 2. c. 5. 59 G. 8. c. 12. & 5 G. 4. c. 83. as relates to the removal of poor persons born in Scotland and Ireland, repealed.

Whereas it is expedient to amend the laws relative to the removal of poor persons born in *Scotland* and *Ireland*, the *Isles of Man* and *Scilly*, and chargeable to parishes in *England*, and to make other provisions in lieu thereof: Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the first day of *January*, one thousand eight hundred and thirty-four, so much of an Act passed in the seventeenth year of the reign of King *George* the Second, intituled *An Act to amend and make more effectual the Laws relating to Rogues and Vagabonds, and other idle and disorderly Persons, and to Houses of Correction*, as relates to passing vagrants to *Scotland* and *Ireland*, and the *Isles of Man* and *Scilly*; and also so much of an Act passed in the fifty-ninth year of the reign of King *George* the Third, intituled *An Act to amend the Laws for the Relief of the Poor*, as relates to the removal of poor persons born in *Scotland* and *Ireland* who have become chargeable to parishes in *England*; and also so much of an Act passed in the fifth year of the reign of His late Majesty King *George* the Fourth, intituled *An Act for the punishment of idle and disorderly Persons, and Rogues and Vagabonds, in that part of Great Britain called England*, as relates to the removal of poor persons born in *Scotland* and *Ireland*, and being chargeable to parishes in *England*, shall be and the same are hereby repealed.

Justices at sessions may order removal, by sea or land, of chargeable poor born in *Scotland* or *Ireland*, &c. at expence of complaining parish.

II. And be it further enacted, That from and after the said first day of *January* one thousand eight hundred and thirty-four it shall be lawful for two justices of the peace, and they are hereby authorized and required, upon the complaint of the churchwardens and overseers of the poor of any parish, township, or other place maintaining its own poor, that any person born in *Scotland* or *Ireland*, or in the *Isle of Man* or *Scilly*, hath become chargeable to such parish, township, or other place maintaining its own poor, by himself or herself, or his or her family, to cause such person to be brought before them, and to examine such person and any other witness or witnesses on oath touching the place of the birth or last legal settlement of every such person, and to inquire whether he or she, or any of his or her children, hath or have gained any settlement in that part of the United Kingdom called *England*; and if it shall be found by such justices that the person so brought before them was born in

either *Scotland* or *Ireland*, or the Isle of *Man* or *Scilly*, and hath not gained any settlement in *England*, and that he or she hath actually become chargeable to the complaining parish, township, or other place maintaining its own poor, by himself or herself, or his or her family, then such justices shall and they are hereby empowered, by an order of removal under their hands and seals, in the form in the schedule hereunto annexed, to cause such poor person, his wife, and such of his or her children so chargeable, as shall not have gained a settlement in *England*, to be removed, by sea or land, in such manner as may have been directed by the justices at quarter sessions assembled in and for the county, city, borough, town corporate, division, or liberty in which the said parish, township, or other place maintaining its own poor may be situate, by and at the charge and expence of the complaining parish, to *Scotland* or *Ireland*, or the Isle of *Man* or *Scilly* respectively, according as such poor person, or his or her family, shall belong to *Scotland*, *Ireland*, or the Isle of *Man* or *Scilly*, the charge and expence whereof shall be repaid, in manner herein-after mentioned, to such complaining parish, township, or other place maintaining its own poor, out of the county rate raised and levied in the county, city, borough, town corporate, division, or liberty in which such parish shall be situate.

Expence to be repaid by county, &c. in which complaining parish is situate.

III. And be it further enacted, That the justices of the peace of every county, riding, city, borough, town corporate, division, or liberty are hereby authorized and required, at the general or quarter sessions of the peace holden in and for such county, riding, city, borough, town corporate, division, or liberty next after the passing of this Act, or some adjournment thereof, and from time to time thereafter, at their general or quarter sessions, or adjournment thereof, to direct in what manner, and whether by sea or land, or part of the way by land and part by sea, such poor person, his wife and child or children, removable under the provisions of this act by the churchwardens and overseers of any parish, township, or place maintaining its own poor within such county, riding, city, borough, town corporate, division, or liberty, shall be removed.

Justices at sessions to direct how parties shall be removed.

IV. And be it further enacted, That the justices of the peace of every county, riding, city, borough, town corporate, division, or liberty shall and may and they are hereby required, at the general or quarter sessions of the peace to be holden in and for such county, riding, city, borough, town corporate, division, or liberty next after the passing of this act, or some adjournment thereof, and from time to time thereafter, at their general or quarter sessions, or adjournment thereof, to make such orders, rules, regulations, and directions for the more effectually carrying the provisions of this act into execution as they in their discretion shall think proper; which orders, rules, regulations, and directions shall from time to time be observed and submitted to by all justices of the peace, overseers, churchwardens, constables, and other persons concerned in or charged with the removal of such poor person, his wife, child or children as aforesaid, within such county, riding, city, borough, town corporate, division, or liberty.

Justices at quarter sessions to make rules, &c. for carrying this act into execution.

V. And be it further enacted, That in case the churchwardens and overseers of the parish, township, or place maintaining its own poor, on whose complaint such order of removal shall be made as aforesaid, shall bring or send to the clerk of the peace or town clerk of the county rate.

Churchwardens, &c. to be repaid expences out of

county, riding, city, borough, town corporate, division, or liberty in which such parish, township, or place maintaining its own poor shall be situate, such order of removal, accompanied with an affidavit sworn before some justice of the peace of such county, riding, city, borough, town corporate, division, or liberty, (who is hereby authorized to administer the same,) of the amount of the expenses *bond fide* incurred and paid by such churchwardens and overseers on account of the removal of such poor person, his wife, child or children as aforesaid, and also a statement of the several items comprised in such amount, such clerk of the peace or town clerk is hereby required to lay the same before the justices of the peace assembled at the quarter sessions, or adjournment thereof, held in and for such county, riding, city, borough, town corporate, division, or liberty, next after he shall have received the same; and the said justices so assembled as aforesaid are hereby authorised and required to order the amount thereof to be paid out of the county rate raised and levied in such county, riding, city, borough, town corporate, division, or liberty; provided that on the removal of such poor person, his wife, child or children as aforesaid, the orders, rules, regulations, and directions of the said justices, made as herein-before mentioned, have been duly complied with.

How expenses
to be defrayed
of removing
poor persons
within London.

VI. And be it further enacted, That all such charges and expenses as aforesaid, which shall be properly and reasonably made for the purposes aforesaid out of any such parish rates within the City of London, shall by such parish or extra-parochial place maintaining its own poor, or parish next adjoining to such extra-parochial place, be charged against the said city of London, and being audited and allowed by the justices of the said city of London assembled at any quarter sessions or adjourned sessions of the peace in or for the said city of London, shall thereupon by the Chamberlain of the said city of London be repaid to the overseers or guardians of the poor of the said parish or extra-parochial place maintaining its own poor, or parish next adjoining to such extra-parochial place, for the benefit thereof; for which purpose a rate or assessment shall be made by the order and under the authority of such justices of the said city of London, in the several wards of the said city of London, at such time or times as such justices shall think fit, in the same manner and with the same powers and authorities as the rates for the relief of the poor are made in the said parishes and extra-parochial places; and the powers and authorities contained in the several acts of parliament for making and collecting rates for the relief of the poor shall be and the same are hereby extended to this act.

How expenses
to be defrayed
when parish is
situate in any
city, &c. not
contributing to
county rate.

VII. And be it further enacted, That in any city, borough, town corporate, division, or liberty which does not contribute to the county rate, or in which no county rate shall be made, raised, or levied, the charges and expenses paid for the purposes aforesaid by the parish or parishes within such city, borough, town corporate, division, or liberty as aforesaid shall be allowed by the justices of the peace for such city, borough, town corporate, division, or liberty as aforesaid, at any quarter sessions or adjourned sessions of the peace, and paid by the order of such justices to the churchwardens or overseers of the poor of the parish or parishes within such city, borough, town corporate, division, or liberty, for which which purposes a general rate or assessment shall be made by the order and

under the authority of such justices in the parish or parishes, if more than one, within such city, borough, town corporate, division, or liberty, at such time or times as such justices shall think fit, in the same manner and with the same powers and authorities as the rates for the relief of the poor are made in the parish or parishes of such city, borough, town corporate, division, or liberty; and the powers and authorities contained in the several acts of parliament for making and collecting rates for the relief of the poor shall be and the same are hereby extended to this act for the making, raising, levying, and collecting the said rate.

VIII. And be it further enacted, That this act shall continue in force until the first day of *May* one thousand eight hundred and thirty-six, and to the end of the then next session of parliament. Term of act.

SCHEDULE.

Form of Order of Removal.

To the Constable of the Parish of _____ in the County of _____

_____ } WHEREAS complaint hath been made by the church-
to wit. } wardens and overseers of the poor of the [parish, town-
ship, *et cetera*, as the case may be] in the said county of _____
unto us, whose names are hereunto set and seals affixed, two of His
Majesty's justices of the peace acting in and for the said county
(one being of the quorum), that _____ a person born in Scot-
land [or Ireland, or the Isle of Man or Scilly,] hath become and is
now actually chargeable to the said [parish, township, *et cetera*, as
the case may be]: And whereas upon examination of the said
_____ taken upon oath before us (which examination is hereto
annexed) it doth appear and we do adjudge, that the said _____
hath not gained a settlement in England, and that he hath a wife
named _____ and _____ children, videlicet, _____
neither of which children have gained any settlement in England:

These are therefore to require you the said constable of _____
aforesaid, in the county of _____ aforesaid, to convey the said
_____ his wife and family aforesaid, to Scotland [or Ireland, or
the Isle of Man or Scilly], in the manner directed by the justices of
the said county of _____ in pursuance of the provisions of a
certain act made and passed in the fourth year of the reign of King
William the Fourth, intituled [*here set out the title of this act.*]

Given under our hands and seals this _____ day of _____
in the year of our Lord one thousand eight hundred and thirty-_____.

[*Here copy the regulations, et cetera, of the justices at
Sessions, as applicable to the removal of the party.*]

Form of Examination.

_____ } THE examination of _____ taken on oath before
to wit. } us, _____ two of His Majesty's justices
of the peace acting in and for the [county, riding, city, borough,
town corporate, division, or liberty] aforesaid, this _____ day of _____

_____ in the year of our Lord one thousand eight hundred and thirty- _____ who on oath saith, that according to the best of [his or her] knowledge and belief [he or she] was born in _____, in that part of the united kingdom called Scotland, [or Ireland, or in the Isle of Man or Scilly,] which [he or she] left about _____ years ago, and hath done no act whereby to gain a settlement in that part of the united kingdom called England, and hath actually become and is now chargeable to the [parish] of _____ in the [county, township, *et cetera*, as the case may be] of _____ [and that he hath a wife named _____ and _____ children, neither of which children have gained a settlement in England].

Sworn the day and year first }
above written, before us, }

3 & 4 W. 4. c. 63.

An Act to render valid Indentures of Apprenticeship allowed only by two Justices acting for the County in which the Parish from which such Apprentices shall be bound, and for the County in which the Parish into which such Apprentices shall be bound, shall be situated; and also for remedying defective Executions of Indentures by Corporations. [28th August 1833.]

56 G. 8. c. 139. Whereas by an act passed in the fifty-sixth year of the reign of his late Majesty King George the Third, intituled *An Act to regulate the binding of parish apprentices*, it is amongst other things enacted, that in all cases where the residence or establishment of business of the person or persons to whom any child shall be bound shall be within a different county or jurisdiction of the peace from that within which the place by the officers whereof such child shall be bound shall be situated, and in all other cases where the justices of the peace for the district or place within which the place by the officers whereof such child shall be bound shall be situated, and who shall sign the allowance of the indenture by which such child shall be bound, shall not have jurisdiction, every indenture by which such child shall be bound, at any time after the first day of *October* therein mentioned, shall be allowed, as well by two justices of the peace for the county or district within which the place by the officers of which such child shall be bound shall be situated, as by two justices of the peace for the county or district within which the place shall be situated wherein such child shall be intended to serve; provided always, that no indenture shall be allowed by any justice of the peace for the county into which such child shall be bound, who shall be engaged in the same business, employment, or manufacture in which the person to whom such child shall be bound is engaged; and notice shall be given to the overseers of the poor of the parish or place in which such child shall be intended to serve an apprenticeship, before any justice of the peace for the county or district within such parish or place shall allow such indenture, and such notice shall be proved before such justice shall sign such indenture, unless one of such overseers shall attend such justice and admit such notice: And whereas, in many instances, petty sessions are held weekly in market towns near adjoining the borders of the county in which such market

towns are situate, and the justices holding such petty sessions act as well for the county adjoining as for the county where such petty sessions are held, and transact the business for large districts in both counties at such weekly petty sessions on market days, to the great advantage, convenience, and saving of expense to the several parishes and villages whose officers have to attend such petty sessions : And whereas since the passing of the said act of the fifty-sixth year of the reign of His late Majesty King *George* the Third numerous indentures of apprenticeship have been allowed by two justices attending and acting at such petty sessions for the county within which the place by the officers whereof such child shall be bound is situated, and by the same two justices acting also as justices for the county within which the place is situated wherein such child shall be intended to serve, such justices conceiving that, as they were acting justices for both counties, they were entitled to allow such indenture accordingly : And whereas doubts have lately arisen whether the allowances of such two justices, although they act as justices for both counties, are valid and effectual, or whether it is not necessary that such indenture should be allowed by four justices, two acting for one county, and two for the other only ; and the settlement of the numerous persons who have already served and are now serving under indentures allowed by two justices acting for both counties in manner aforesaid will be set aside, to their manifest injury : Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the passing of this act all indentures for the binding of parish apprentices which have been previous to the passing of this act allowed, and shall hereafter be allowed, by two justices of the peace acting as well for the county or district within which the place by the officers of which such child shall be bound shall be situated, as for the county or district within which the place shall be situated wherein such child shall be intended to serve, shall be deemed and taken to be as good, valid, and effectual, to all intents and purposes, as if the same had been allowed by two justices of the peace acting only for the county or district in which the place from which such child shall be bound is situated, and also by two other justices of the peace acting only for the county or district within which the place shall be situated in which such child shall be intended to serve.

Indentures allowed by justices acting for two counties to be as valid as if granted by justices acting for different counties.

II. And whereas, by divers acts of parliament heretofore made and passed, the directors, guardians, acting guardians, or other officers of incorporated hundreds, parishes, and other districts are by the said acts of parliament respectively authorized to bind poor children apprentices in the manner by the said acts of parliament respectively prescribed and directed : And whereas the said directors, guardians, acting guardians, and other officers have bound out poor children apprentices by indentures, to which the said directors, guardians, acting guardians, and other officers have been, by their description as directors, guardians, acting guardians, or other officers of such incorporated hundreds, parishes, and other districts respectively, made parties of the one part, or to which they have, by their said descriptions respectively, been binding parties, and which indentures have been executed by the said directors, guardians, acting guardians, and other officers by affixing thereto the seal of the corporation of which

Indentures with seal of corporations annexed to be valid.

they are directors, guardians, acting guardians, and officers respectively, and in no other manner by them : And whereas doubts have been entertained as to the effect and validity of indentures so executed ; and it is desirable to remove such doubts ; be it declared and enacted, That from and after the passing of this act in all cases where any indentures for the binding out poor children apprentices have been heretofore or shall be hereafter executed by any directors, guardians, acting guardians, or other officers of any hundreds, parishes, or other districts now incorporated or hereafter to be incorporated under and by virtue of any act of parliament, by affixing thereto the seal of the corporation of which they are or shall be directors, guardians, acting guardians, or other officers respectively, such execution of the said indentures respectively shall be deemed and taken to be a good, valid, and effectual execution of the said indentures respectively by the said directors, guardians, acting guardians, or other officers of such incorporated hundred, parishes, or other districts respectively.

Indentures to be allowed by two justices, one of them acting for the county and one for the city, &c.

III. And whereas it is expedient that justices of the peace in every city, borough, or town corporate should have concurrent jurisdiction with county magistrates in apprenticing any child or children within the limits of such city, borough, or town corporate ; be it therefore enacted, That from and after the passing of this act every indenture for the binding of parish apprentices within any city, borough, or town corporate, shall be allowed by two justices of the peace, one of such justices acting for and on behalf of the county, and the other of such justices acting for and on behalf of the city, borough, or town corporate within the limits of which such child shall be bound.

This act not to set aside decisions already come to.

IV. Provided always, and be it further enacted and declared, That nothing in this act contained shall be construed to affect or set aside any decision or judgment made or given in any court of judicature respecting any such indentures.

ADDENDA

OF

CASES PUBLISHED DURING THE PRINTING OF THIS WORK.

212. *Rex v. Adames*, *M. T. 3 W. 4.*—4 *B. & Ad. 61.*—By a rate for the relief of the poor of the parish of *Pagham* in *Sussex*, allowed *November 1830*, the defendant, who was owner and occupier of lands lying within a district of the parish called *Pagham Level*, was assessed at 1s. 8d. in the pound on the sum of 312*l.* 14s. 5d. annual value, against which he appealed. The appeal coming on, to be heard at the *April* sessions, 1831, was respited; and in the mean time it was referred by the Court to three valuers, to survey and value the parish. At the *July* sessions, 1831, the valuers, having made their valuation, stated that the amount assessed by them upon each occupier of lands within the parish, was the sum which they considered the land would let for, but that they had not made any allowance for monies paid for sewers' rates. The sessions confirmed the valuation, subject to the opinion of this Court, on the question whether or not the sewers' rate paid by the defendant ought to have been deducted from the sum assessed on him? The valuers stated in evidence that the sewers' rate was universally understood to be a landlord's tax; that they had never been called upon to make any deduction from the value of lands in respect thereof; and that they would not have thought of making any special note on the point, had they not been requested on the part of the appellant to do so, in consequence of the pending dispute. The sum assessed on the defendant in this valuation was 306*l.* 6d. The sewers' rate is payable by those only who are owners of lands within *Pagham Level*.—PARKE J. delivered the judgment of the Court.—The question for the opinion of the Court in this case, is, in effect, whether the occupiers of lands in a district of the parish of *Pagham*, which is liable to be flooded, and is protected from floods at a certain occasional expense (for that is the nature of the sewers' rate), ought to be rated at the same sum as the occupier of lands of similar quality and of equal annual produce, lying in the same parish, but not liable to the same expense.—We are of opinion that he ought not. It is obvious that the average annual net profit of one description of land is not the same as that of the other; and, both upon principle and authority, we think the rate ought to be made in proportion to that profit. The statute 43 Eliz. c. 2. requires the

Lands are rateable to the relief of the poor, in proportion to the net rent which a tenant at rack rent would pay, he discharging all rates, charges, and outgoings: and, therefore, an occupier (whatever be his interest) of land which requires to be protected from floods at an occasional expense defrayed by a sewer's rate is not rateable to the poor at the same sum as the occupier of lands of similar quality and equal annual produce in the same parish, not liable to the sewer's rate; but he should be rated at that sum, minus the sewers' rate.

churchwardens and overseers to raise competent sums, by the taxation of every occupier of lands, according to the ability of the parish : nothing is expressly said as to the principle upon which the rate should be made, but it is implied that it must be made with equality, and with some reference to the subject of occupation. Now it is quite clear it ought not to be made according to the profit derived by the occupier himself ; for if that were so, the rate must vary according to the nature of the occupier's interest. An occupier who is tenant at will at rack-rent, and therefore receives a less share of the annual profit of the land than one who is tenant for years at small rent, and still less than one who is a tenant in fee simple, and pays none at all, would be rateable at a less sum ; a proposition which was never yet contended for.—Again it is quite clear, that though the occupier is the person who nominally pays the tax, it is in reality paid by the beneficial owner, and is a charge upon the land. In proportion as the average tax which the tenant has to pay, is greater, in the same proportion will he give less rent to the owner. Ultimately, in the long run, this will always be the case, though when the tenancy is for a term more or less long, the burthen upon the landlord is postponed for a greater or less period. This being so, it follows that, in order to make an equal rate, the nature of the occupier's interest must be disregarded, and the rate imposed according to some value of the subject of occupation. Usage and convenience have established this value to be not that of the estate or property itself, but that of the profit which is or might be made from the estate or property ; and as it would be very difficult and extremely troublesome to ascertain the precise value of that profit during the time for which each rate is made, and in case of occasional profit both troublesome and unjust, *Rex v. Mirfield (a)*, *Rex v. Hull Dock Company (b)*), to make a rate for a large sum at one time and a small one or none at another, upon the same land, the rule has been to assess according to the annual profit of the land ; or, where the produce is not matured in one year, then upon an average of years, from which profit deductions are allowed for all the expenses necessary to its production. It is not material whether the whole or a certain aliquot part of that net profit be rated, provided all lands of the same description are rated equally upon that aliquot proportion of the profit ; and in practice it is usual, and it is most convenient, to rate lands at the rack-rent which they would pay to a landlord, or some certain portion of it, the tenant paying all rates, charges and outgoings ; which is in effect rating according to a part of the net profit only ; but provided it be the same aliquot part in all cases, it makes no difference.—Further, if the subject of occupation be of a perishable nature, or require an annual expense to secure its existence, an allowance ought to be made on this account ; for the total annual profit is not the net annual profit ; a part must be set aside for the restoration and maintenance of the subject of occupation. It is on this principle that buildings have been permitted to be rated at less in proportion than arable and other land. The cases, especially those of a more recent date, in which the principle of rating has been more fully discussed and considered, will be found to have established this rule of rating, which is, in other words, that all lands are to be assessed in proportion to the net rent which a tenant at rack-

(a) 10 East, 219.

(b) 5 M. & S. 384.

rent would pay, he discharging all rates, charges and outgoings.—It may be sufficient to refer to the following authorities in support of this position. *Rez v. The Birmingham Gas Light and Coke Company* (a), *Rez v. Hull Dock Company* (b), *Rez v. Attwood* (c), *Rez v. Trustees of the Duke of Bridgewater* (d), *Rez v. Tomlinson* (e), *Rez v. Lower Mitton* (g), *Rez v. The Oxford Canal Company* (h), *Rez v. Joddrell* (i). It remains only to apply the principle to the present case, and there can be no difficulty in saying, that land which requires some occasional expenditure to preserve it from being damaged by water, and to make it as productive as it is, would let for less rent than similar land which requires none, the tenant defraying amongst others that occasional expenditure. In other words, the net average annual profit of both is not the same, and consequently the rate ought not to be the same.—In the course of the argument a question was asked, whether land of which the land-tax was redeemed ought to be rated higher than land of the same quality, which is still chargeable with the tax. The answer is, that it ought not; the annual net profit of both is the same, though such annual profit in the latter case is liable to a tax from which it is by law exempted in the former. The rate in the present case must therefore be amended.—I must add that this is the judgment of myself and my brothers *Littledale* and *Patteson*, who heard the argument. Lord *Tenterden* was of a different opinion.—TAUNTON J. then said that he concurred in the judgment delivered.

213. *Sturch v. Clarke and Others, M. T. 3. W. 4.*—4 B. & Ad. 113.—Case for wrongfully and maliciously taking and distraining goods of the plaintiff, as a distress for 141l. for a poor rate alleged and pretended to have been duly assessed on him, and to be in arrear, such goods being of much greater value than 141l., to wit, 700l., whereby the defendants then and there took a great, unreasonable; and excessive distress for the said 141l., &c., and wrongfully and maliciously detained the same, to wit, for three days, and until the plaintiff was obliged to redeem the same by paying 141l. and costs; whereas one fourth of the distress would have been sufficient to satisfy the said 141l. and charges, &c. Plea, the general issue. At the trial before *Gaselee J.*, at the *Buckinghamshire Summer assizes 1832*, it appeared that the distress (consisting of sheep and rams, and a quantity of beans,) was taken under a warrant issued by two justices to the overseers of the parish of *Haddenham, Bucks*, reciting that the plaintiff had been assessed to the poor rate in the sum of 141l., and had refused payment, &c., and requiring them to make distress of the plaintiff's goods and chattels; and if the sum, with

Plaintiff declared in case, that the defendants wrongfully and maliciously took his goods of the value of 700l. as a distress for 141l. alleged and pretended to be due for a poor rate, whereby they levied an unreasonable and excessive distress for the said 141l.; and it was proved that the defendants, overseers, having a regular distress warrant

for the rate, distrained cattle, &c. of the plaintiff, to the value of more than 600l. :

Held, that the plaintiff was not bound to demand a copy of the warrant, pursuant to 24 G. 2. c. 44. s. 6. before commencing his action, as the overseers had not acted in obedience to the warrant, and no action would have lain against the justices.

Held further, that it was not a question to be left to the jury on these facts, whether or not the defendants acted maliciously.

And, on motion in arrest of judgment, held, that the declaration, though it did not expressly admit any poor rate to have been due (on which ground it was objected that the action ought to have been trespass), was sufficient, at least after verdict.

- (a) 1 B. & C. 506.
- (c) 6 B. & C. 277.
- (e) 9 B. & C. 163.
- (h) 10 B. & C. 163.

- (b) 3 B. & C. 516.
- (d) 9 B. & C. 68.
- (g) 9 B. & C. 810.
- (i) 1 B. & Ad. 403.

costs, &c., were not paid in five days, to sell the said goods and chattels, and retain the amount, rendering the overplus to the plaintiff. The defendants, two of whom were the overseers, and the third an auctioneer employed by them, distrained goods which were valued by a witness for the plaintiff at 642*l*. The plaintiff obtained a verdict for 10*l*.—**PARKE J.** The object of the statute in making a demand of the warrant necessary is, that the justice may be joined as a defendant. But this is an action for seizing goods more than reasonably sufficient for the probable exigency of the distress-warrant; an excess for which the justices could not possibly have been made joint defendants. In such a case the act does not apply. *Bell v. Oakley* (a) decides this, and it is apparent from the terms of the act. *Milton v. Green* (b) shews the distinction between cases in which the magistrate may be joined as wrong-doer, and those in which the warrant is regular, but the officer has exceeded the authority given by it. *Price v. Messenger* (c), and all the modern cases on the subject, shew that where demand of a copy of the warrant is held necessary, it is upon the ground that the officer acted in obedience to it. As to the first objection, the effect of the declaration is, that whether 141*l*. were due or not, more was taken by the defendants than was in fact due. I think it is sufficient, at least in this stage of the proceedings.—**TAUNTON J.** I am of the same opinion. It seems to me that the term “*excessive*” implies that some poor rate was due. A copy of the warrant would have been of no use, where no proceeding could be taken against the justices.—**PATTESON J.** I am of the same opinion. In *Branscomb v. Bridges* (d), where the plaintiff's goods were distrained for rent, the whole having been tendered, and there having been no subsequent demand and refusal, it was held that, if trespass would lie, still the plaintiff might waive the trespass and declare in case for an excessive distress. At all events, I think the present declaration is good on motion in arrest of judgment, whatever might have been the result on special demurrer.—*Rule refused* (e).

A surrender of an old lease by a grandfather and great uncle, and the taking of a new lease by the grandson and great nephew, at a nominal fine to the lord of a manor, is not a purchase of an estate within the statute 9 G. 1. c. 7. s. 5.

214. *Re v. Lydlinch*, M. T. 3 W. 4.—4 B. & Ad. 160.—On appeal against an order of two justices, whereby *John Tucker*, his wife and children, were removed from the parish of *Hilton*; in the county of *Dorset*, to the parish of *Lydlinch*, in the same county, the sessions confirmed the order, subject to the opinion of this Court on the following case:—By lease dated the 22d of December 1764, *G. Pitt*, lord of the manor of *Hilton*, demised a dwelling-house and garden, situate within the manor, to *John Tucker* of *Lydlinch* (who was the grandfather of the pauper), in consideration of a surrender made by *Arthur Corfe* and *E.* his wife, of the said dwelling-house and garden, which they claim to hold for their lives successively (the lease having, as was recited, been consumed in a then recent fire, together with the dwelling-house, which *Tucker* was rebuilding); and also in consideration of another lease of the same premises, granted to *William Corfe*, determinable on the decease of the said *John Tucker*, and in consideration of the rebuilding of the premises by *Tucker*, and of 1*s.* paid by him to *Pitt*: Habendum to *Tucker*, his executors, &c., from the day of the date thereof for the term of

(a) 2 M. & S. 259.

(b) 5 East, 238.

(c) 2 B. & P. 158.

(d) 1 B. & C. 145.

(e) As to demand of a copy of the warrant, see *Key v. Grover*, 7 Bing. 312., and the cases there cited.

fourscore and nineteen years, if *Tucker* and his wife, and *Meliar* their daughter, or either of them, should so long live, at the yearly rent of 1s. The lessee covenanted to pay the rent, to attend the lord's court and do suit and service there, to finish the rebuilding of the dwelling-house within two years, and to repair during the term. *John Tucker* (the grandfather of the pauper) was the grandson of *William Corfe*, and the great nephew of *Arthur Corfe*, the surrenderors of the leases, who were brothers. It did not appear that any pecuniary consideration passed from *Tucker* to either of them. He continued to inhabit the premises until his death in 1818. It was found by the sessions that the premises were not of the value of 30*l*. when *Tucker* rebuilt the house. The question for the opinion of this Court was, whether *John Tucker*, the grandfather of the pauper, gained a settlement by estate in the parish of *Hilton*. If so, the pauper was derivatively settled therein.—DENMAN C. J. *Rex v. Tarrant Launceston (a)*, is decisive to shew that this is not a purchase within the 9 G. 1. c. 7. s. 5.—PARKE J. The statute applies to purchases for money consideration only. Here it may be inferred, from the relationship of the parties, that natural love and affection formed an ingredient in the consideration. The lord was only the medium of the arrangement in the family.—TAUNTON J. In order to bring a case within the statute, the consideration must consist wholly of money. Here there were several considerations, and it does not even appear that there was a pecuniary one.—PATTERSON J. concurred.—Order of sessions quashed.

215. *Rex v. Clixby, M. T. 3 W. 4.—4 B. & Ad. 153.*—On appeal against an order of two justices, whereby *W. Clayton*, his wife and family, were removed from the parish of *Caistor* to the parish of *Clixby*, both in the parts of *Lindsey* and county of *Lincoln*, the sessions confirmed the order, subject to the opinion of this Court on the following case:—*Clixby* belongs, with the exception of about twenty acres of land, to one proprietor, *Mr. Harman*. There are nine occupiers of land in *Clixby*, including *Harman*, who retains some portion of his estate in his own hands; he holds no courts. The pauper (the only witness examined) stated that he had known the place thirty-three years, and had never known or heard of any pinder there before 1825. In 1825, *Harman* and two other occupiers of land in *Clixby*, of whom *Mr. Lawrence*, constable of *Clixby*, was one, ordered the pauper to go and be sworn in pinder. It did not appear in evidence that there was any public meeting of the parish, or any other meeting to appoint him. The pauper went with *Lawrence* to a justice of peace, and was sworn in. He impounded cattle in *Clixby* in that year, and continued to do so for several years, till he was removed. In 1826 he was again sworn in before two justices of the peace. During all this time he resided in *Clixby*. The sessions found that this was a public annual office. The question for the opinion of this Court was, whether, by such service and swearing in, the pauper gained a settlement in *Clixby*.—DENMAN C. J. The court of quarter sessions have found this to be a public annual office, subject to the opinion of this Court on the evidence. We think their finding is not warranted by the facts which they have stated. The office of pinder in this parish is not proved to be ancient, for it is not

In 1825 three occupiers of land in a parish, ordered *A.* to go and be sworn in pinder, and he was sworn in before a justice of the peace, and served as pinder during that year. He was again sworn in in 1826, and served several years, residing in the parish all the time. Before 1825 there was no such officer as a pinder remembered in the parish: Held, that he gained no settlement by serving the office.

known that there was any such officer before 1825: Nor was the pauper appointed by any authority known to the law. The hog-ripper is an annual officer of great public utility, appointed at the court-leet. It is not necessary to decide generally whether a pinder, properly appointed, be a public annual officer within the act; it is sufficient to say, that under the circumstances of this case, the office was not in this parish a public annual office.—*PARKER, TAUNTON, and PATTERSON* Js. concurred.—Order of sessions quashed.

A female pauper hired for a year, was, during the year, apprehended and fined for having committed a malicious trespass, contrary to the statute 7 & 8 G. 4. c. 30. She went to prison instead of paying the fine, by the advice of her mistress, who told her to return when her time was out; and after her imprisonment, which lasted a month, she did return to her service, and continued in it till the end of the year, and was paid her whole year's wages: Held, that there was a dispensation with the service during the month of her imprisonment, and that she gained a settlement.

216. *Rex v. Coningsby*, *M. T. 3. W. 4.* — 4 *B. & Ad.* 156.—On appeal against an order of two justices, whereby *E. Flintham*, single woman was removed from the parish of *Coningsby*, in the parts of *Lindsey*, in the county of *Lincoln*, to the parish of *Stickney* in the said parts and county; the sessions discharged the order, subject to the opinion of this Court on the following case:—A few days before *May-day* 1829, the pauper was hired by *Mr. Gosling*, from the same *May-day*, at the wages of 3*l.* 10*s.*, and went into his service, in the parish of *Stickney*, on that day. About harvest time, in the same year, she was apprehended upon the complaint of *W. Foster*, her master's neighbour, on a charge of having wilfully and maliciously damaged property belonging to him. The magistrates before whom the complaint was heard, fined her, and she, not paying the fine, was committed to prison for one month. It was by the advice of the mistress (who was present at the hearing of the complaint) that the pauper went to prison instead of paying the fine. When she was taken to prison, her mistress told her she was to return when her time was out, and she also sent her provisions occasionally during her imprisonment. She was discharged at the end of the month, returned immediately to her master's, and went about her work as usual. She staid in the service till *May-day* 1830, and on going away received her whole wages. The question for the opinion of this Court was, whether, under these circumstances, she gained a settlement in the parish of *Stickney*. *DENMAN C. J.* This head of settlement is made to depend upon two things: first, there must be a hiring for a-year; and, secondly, an abiding and continuance in the same service for a whole year. Those words, strictly construed, would perhaps import actual service. It has been decided, however, that there may be a dispensation by the master with the performance of the servant's duties for a time, and that during such period there is a constructive service, sufficient to satisfy the words of the statute. The consent of the master to dispense with such service may be either express or implied; and it is implied, where the servant, having absented himself for a time, has returned to the service, and been received by the master, and had his full wages paid. I think, in this case, the absence of the pauper during the imprisonment must be taken to have been with the consent of the mistress. It may be collected from the statement that the pauper could have paid the fine, and that the mistress interfered to prevent her. After the term of imprisonment expired, she received her back, and paid her full wages. It has been ingeniously argued, that the absence here was not permissive, because the law compelled the pauper to be imprisoned unless she paid a fine. But she had her election, either to pay the fine or go to prison; and she did the latter by the advice of her mistress, who supplied her with provisions during her confinement. It seems to

me, therefore, that the service was dispensed with by the mistress. *Rex v. Westmeon* (a), and *Rex v. North Cray* (b), are distinguishable; for there the masters did not consent to the absence, and shewed their dissent in the most effectual way by deducting from the wages.—PARKE J. To constitute a settlement by hiring and service, there must be a hiring for a year and a service for a year, but the service need not be actual; of necessity it may be constructive, because no servant serves his master every hour of every day; and a dispensation from service may be implied. Even in the case of a wilful absence, it has been held that if a master receive back his servant afterwards, and pay him his wages, that is a dispensation with the service during the period of absence. In *Rex v. North Cray*, and *Rex v. Westmeon*, the absence of the servant was wilful, for the imprisonment was occasioned by his own misconduct, but those cases are distinguishable from the present, because the pauper never returned to the service after the imprisonment. Absence during imprisonment, like absence from other causes, may be purged by consent. It has been said that the master during the term of imprisonment could not recall the pauper to his service. But, as Mr. Clinton has observed, the same may be said where the absence is occasioned by illness, proceeding from the misconduct of the servant; or where the servant during such absence is at a great distance from the master.—TAUNTON J. I am of the same opinion. *Rex v. North Cray* and *Rex v. Westmeon* are distinguishable, because it did not appear that the master again received the servant into his service; but I cannot help thinking the good sense to be in what is stated by Lord Mansfield and Buller J. in *Rex v. North Cray*. The pauper, eight or nine days before the expiration of the service, had been committed for not giving security to indemnify the parish, as the father of a child likely to be born a bastard, and Lord Mansfield says, “The single question is, whether the pauper served his year; in fact he did not; did he then constructively? There is not a pretence that the master consented to dispense with the time he did not serve; his absence and imprisonment were the consequences of his own criminality. His imprisonment was not illegal.” Those observations apply to the present case; and I think this doctrine of dispensation has been carried too far. The current of authorities, however, compels me to say there may be a constructive service even during the time for which the servant is committed in execution for misconduct; and I yield to authorities, not to reason.—PATTESON J. I think that we are bound by the authorities to hold that there was a dispensation with the service during the time the pauper was imprisoned.—Order of sessions quashed.

217. *Rex v. Tremayne*, M. T. 3 W. 4—4 B. & Ad. 162.—In a rate made for the relief of the poor of the parish of *Maristow*, in the county of *Devon*, on the 15th of September 1831, *J. H. Tremayne*, Esq. was assessed “for manganese dues,” in the sum of 7l. 10s. He appealed against the rate, on the ground that he was not the occupier of any manganese dues in the parish; and also that he was not liable by law to be assessed in the said rate, for or in respect of any manganese dues. The sessions confirmed the rate, subject to the opinion of this Court on the following case :—*H. H. Tre-*

An owner of the soil, who has granted to adventurers liberty to dig, mine, work and search for manganese twenty-one years, and the same to take, and convert to

(a) *Cald.* 129.

(b) *Cald.* 495.

their own use, and to make adits, shafts, &c. rendering to him *l.* 15s. for every ton weight of manganese raised during the term, is not an occupier of any portion of the soil, and consequently not rateable to the relief of the poor.

mayne, clerk, the deceased father of the said *J. H. Tremayne*, being tenant for life, with a power of granting leases and settlements of the lands hereinafter mentioned, did, by indenture, bearing date the 23rd of *October* 1815, and made between the said *H. H. Tremayne* of the one part, and *John Williams*, Esquire, of the other part, grant unto *Williams*, his partners, fellow adventurers, &c., liberty, licence, and authority to dig, work, mine, and search for manganese, in and throughout all those messuages, farms, tenements, and premises, called *Allerford*, *Lea Down*, and *Holster Yard*, situate in the parish of *Maristow*: and the same manganese there found, to raise and bring to grass, and there to pick, dress, cleanse, and make merchantable and fit for sale; and the same to take and carry away, convert, and dispose of at his and their will and pleasure. The said indenture also gave them liberty, within the before mentioned limits, to make and work such adits, shafts, pits, watercourses, &c., and to erect such engines and other buildings, as they should think necessary or convenient; and it gave them also the use of waters and watercourses within the said limits, with liberty to divert the same, &c. for the more effectually and beneficially exercising and enjoying of the liberties, powers, and authorities by the said indenture granted; excepting unto *H. H. Tremayne*, his heirs and assigns, all other ores, minerals, and metals, and all quarries of stone and slate within or under the said premises, or any part thereof, with full power and authority to them, their workmen and agents, into and upon any part of the same premises to enter, and in any manner to search for, break, land, stamp, and dress the said last mentioned ores, minerals, metals, stone and slate, and to take and carry away the same. The grant was for twenty one years from the 15th of *March* then last past; yielding and paying unto the said *H. H. Tremayne*, his heirs or assigns, the sum of *l.* 15s. for every ton weight of the said manganese raised or gotten during the term within the limits of the said settlement; free and clear of and from all charges and expenses of raising, dressing, and returning the same, or otherwise incident to the adventure. *H. H. Tremayne* died on the 10th of *February*, 1829, and the appellant succeeded him, and is now seised as tenant for life of the lands above described, subject to the said grant or settlement, and (as to some of the lands) to leases at rack-rent hereinafter mentioned. By virtue of the grant, and within the limits thereby described, the said *J. Williams*, with his partners and co-adventurers, have dug and sunk shafts, driven adits and levels, and opened pits for the purpose of searching for and raising manganese. They have also erected crushing-machines, worked by water wheels, for pulverizing the ore when raised, and built houses and sheds for dressing and cleaning the same. The whole of these works have been undertaken and performed at their sole risk and expense, by their own labourers, and under the entire direction and superintendence of their own agents, and without any expense, risk, or interference whatsoever of, or on the part of, either *H. H. Tremayne* or *J. H. Tremayne*; and the whole have continually been, and still are, in the sole and exclusive possession and occupation of the said *J. Williams*, his partners and co-adventurers. Considerable quantities of manganese have from time to time been raised by them, the whole of which, after undergoing several processes of pulverizing, dressing, and cleansing at a great expense, have been sold and disposed of by them as and

to whom they thought fit. *J. Williams* and his co-adventurers have regularly accounted with *H. H. Tremayne*, in his lifetime, and since his death with *J. H. Tremayne*, for the 1*l.* 15*s.* per ton reserved by the said indenture, and the assessment now appealed against is laid in respect of the said money payments. The tenements and farms of *Allerford* and *Lea Down* part of the lands comprised within the limits of the above settlement, are let to and occupied by tenants at rack-rent, subject to a reservation of mines, ores, metals and minerals, with the usual powers of digging and searching for the same; those tenants are respectively assessed to the poor rates of the parish in respect of such occupations, proportionably with the other farmers and occupiers of lands in the parish; and the tenement and farm of *Holster Yard*, the residue of the lands within the same limits, are in the occupation of the said *J. H. Tremayne*, who is also rated in the rate appealed against in respect of such occupation. The question for the opinion of the Court is, whether, under these circumstances. Mr. *Tremayne* can be considered such an occupier in the parish of *Maristow*, as to make him liable for the above rate for manganese dues. DENMAN C. J. The rate cannot be supported. Here the landlord receives a rent, and is not the occupier of the soil as in *Rowls v. Gells* (a). In *Rex v. St. Austell* (b), the landlord, by the express terms of the grant, was to be paid, not by money, but by the produce of a part of the mine, unless he elected to be paid in money. Here he is paid by a sum of money, in proportion to the weight of manganese raised; but he has no right to any portion of the ore. If we had any doubt, we would permit the rate to stand, that the party rated might bring an action; but we have no doubt whatever. The order of sessions must therefore be quashed.—PARKER J. A party can only be rateable as the occupier of land. Here Mr. *Tremayne* is not the occupier of the soil; he receives a money rent. The case falls within *Rex v. The Earl of Pomfret* (c). It is said that no interest in the land passed, but a mere authority to the grantee to dig. That may be so, and, in that respect, the case resembles *Rex v. St. Austell*; but then it would follow that *Tremayne* is himself the occupier by his agents; and if so, as the owner of mines, he is exempt from rateability by the statute of *Elizabeth*, and the nature of the property, and he could not be rated unless for dues. This case is distinguishable from *Rowls v. Gells*, *Rex v. The Baptist Mill Company* (d), and *Rex v. St. Austell*, because here, the owner is not entitled to any portion of what may be called the soil. The ground of the decisions in those cases was, that the reserved ore was a portion of the soil, and that the party entitled to it was therefore the occupier; but here, if he was not entitled to that portion of the soil, he is not the occupier, and then this is like the case of *Rex v. The Earl of Pomfret*, (where the reservation was not of a part of the soil, but of something different,) and is distinguishable on that ground from *Rex v. St. Austell* and the other cases, where a portion of the mineral itself was received.—TAUNTON J. I entirely concur. The distinction is very subtle; but the cases may, perhaps, be reconciled by distinguishing between a reservation of a rent, and a reservation of part of the soil itself. In the latter case, the lessor has been consi-

(a) *Cowp.* 451.(c) 5 *M. & S.* 139.(b) 5 *B. & A.* 693.(d) 1 *M. & S.* 612.

dered as occupying that part of the soil which he has so reserved. Here there is a pecuniary rent reserved, and no reservation of any part of the soil. If we were to hold that Mr. *Tremayne*, was rateable here, we should be shaking a well-established principle, that a landlord is not rateable for his rent. And again, if Mr. *Tremayne* is to be considered as the occupier of the soil of the mine, and the lessees as his agents, he is not liable to be rated; because coal mines are the only mines mentioned in the statute of *Elizabeth*, which has therefore been construed to exclude all others.—PATTERSON J. I am of the same opinion. The rule is very clearly laid down by *Le Blanc J.* in *Rex v. The Baptist Mill Company*; “Where a person receives without risk part of the produce extracted from the bowels of the earth, he is an occupier of land; but where he merely receives a rent or money payment, there he is not an occupier.” Here Mr. *Tremayne* is not the receiver of what is extracted from the bowels of the earth, but of money. He is not liable, therefore, to be rated as an occupier of land.—Order of sessions quashed.

On the trial of an appeal against an order of removal, the respondents having proved, by parol, the renting of two fields in the appellant parish, at 15*l.* a year, and an occupation and payment of the rent for a whole year, the appellants then gave evidence, that the contract for taking the two fields was reduced into writing: Held, that it lay upon the latter to produce the written contract.

218. *Rex v. Padstow, M. T. 3 W. 4.—4 B. & Ad. 208.*—On appeal against an order of two justices, whereby *Mary Ann Old* and her children were removed from the parish of *Little Petherick*, in the county of *Cornwall*, to the parish of *Padstow* in the same county, the sessions confirmed the order subject to the opinion of this court on the following case:—In support of the order of removal the respondent parish (*Little Petherick*) proved by parol evidence that, in the year 1828, the pauper’s husband, *Martin Old*, who is now living in *America*, rented two fields in the parish of *Padstow*, of *J. A. Corkhill*, at 15*l.* a year; that he occupied and paid the rent agreed on for the same for two years, viz. from *Michaelmas* 1828 to *Michaelmas* 1830; and that, during, the first year of such tenancy and occupation, he resided in *Padstow* forty days and upwards. For the appellant parish a witness was called, who stated that he had been a clerk of *Corkhill* (who has since become a bankrupt); that he was present in 1828 when *Martin Old* took the fields in question of his master, and that the conditions of taking were reduced into writing and signed by the parties on unstamped paper. Upon this evidence, the court of quarter sessions confirmed the order, subject to the opinion of this court, whether they were justified in so doing, or whether erasing the evidence previously given on the part of the respondents, and rescinding the conclusion which arose from that evidence, they ought to have quashed the order of removal.—*Denman C. J.* The rule undoubtedly is, that where a party has made out a *prima facie* case, and the opposite party attempts to cut it down by a written instrument, he must prove it.—*Parke J.* The rule is very clearly settled, that if it comes out on the cross-examination of the plaintiff’s witnesses that there is a written instrument, he must produce it; but if he makes out a *prima facie* case without shewing there was any written contract, the other party, if he relies on that written contract, must produce it.—*Per Curiam.* The order of sessions must be confirmed.—Order of sessions confirmed.

219. *Rex v. Mattersey, M. T. 3 W. 4.—4 B. & Ad. 211.*—On appeal against an order of two justices, whereby *William Green Otter* was removed from the parish of *Kettering*, in the county of *Northampton*, to the parish of *Mattersey*, in the county of *Nottingham*,

If a woman pregnant of a bastard be fraudulently removed by

the sessions confirmed the order, subject to the opinion of this Court on the following case:—*Elizabeth Otter*, the mother of the pauper, lived with one *William Green*, in the parish of *Mattersey*, for eight years, in the course of which time she was delivered of two children, both illegitimate, of whom the said *William Green* was the putative father. The pauper *W. G. Otter* was one of them, and was born at a place known by the name of the *Lodge-on-the-Wolds*, an extra-parochial place, not maintaining its own poor. The mother of the pauper was sent there by the said *William Green*, her master, when she was far advanced in her pregnancy, in order to prevent the said *W. G. Otter* from being born in the appellant parish. The said *W. Green* was proprietor and occupier of a considerable quantity of land in the said parish. He had never, in the presence or to the knowledge of the said *Elizabeth Otter*, spoken to the parish officers on the subject of removing her to the *Lodge-on-the-Wolds* for the purpose aforesaid. She returned to the house and service of the said *William Green* as soon as she was sufficiently recovered, namely, in six weeks after her confinement, the expences of which, and also of her maintenance during her stay at the *Lodge-on-the-Wolds*, were paid by the said *William Green*.—DENMAN, C. J. The general rule is, that an illegitimate child is settled in the parish in which it is born. Unless this case, therefore, comes within some of the exceptions to that rule, *W. J. Otter* would be settled in the place of his birth, if it were not extra-parochial, and certainly not in *Mattersey*. It is said that he is settled in *Mattersey*, because the mother, when pregnant, was fraudulently removed from that parish by a parishioner liable to pay rates there. But I think it may be collected from *Tewksbury v. Twynning* (a), and *Masters v. Child* (b), that in order to fix the settlement of an illegitimate child in the parish from which the mother has been fraudulently removed, the fraudulent removal must have been by the parish officers. Here that was not so. No case has gone so far as to shew that if the fraud be by an individual, not a parish officer, the child shall be settled in the parish where the fraud was committed.—PARKER J. concurred.—TAUNTON J. It does not appear by the statement in the case, that the mother of the pauper was settled in the parish of *Mattersey*. It is merely said that she lived there. In *Masters v. Child*, it is stated that if a woman, being with child of a bastard, and settled in one parish, is persuaded by parish officers to go into another, and there to be delivered, this fraud will make the parish chargeable where the mother was settled, though the child was not born there. But if the woman accidentally come into a parish, and is persuaded by some of the parishioners to go into another, which she doth, and there is delivered, this shall not charge that parish which persuaded her. That is precisely in point. Here the mother of the pauper was persuaded by one of the parishioners to go into an extra-parochial place. Independently of that decision, I should have been bold enough to come to the same conclusion. The general rule is, that an illegitimate child shall be settled in the place where it is born; and the fewer exceptions there are to that rule the better.—PATTERSON J. concurred.—Order of sessions quashed.

220. *Rex v. Ormesby*, M. T. 3. W. 4. — 4 B. & Ad. 214. — Upon appeal against an order of two justices, whereby *William*

parish officers, for the purpose of preventing the bastard from becoming chargeable to their parish, the child is settled in the parish from which the mother was so removed; but not if the mother be so fraudulently removed by a parishioner liable to pay rates, not being a parish officer.

In 1827 a cottage and land were hired for

(a) 2 Bult. 349.

(b) 3 Salk. 66.

a year, at the rent of 11l. 10s., and it was agreed that the land should be entered on at *Lady-day* 1827, and held till *Lady-day* 1828, and the cottage entered on at *May-day* 1827, and held till *May-day* 1828. The land and cottage were occupied for a year respectively, commencing and ending at the days agreed on, and the rent paid: Held, that that was an occupation of a tenement for one whole year, sufficient to give a settlement under the 6 G. 4. c. 57.

A. agreed to become the hired servant of B. for five years, to do such work as belonged to the finishing of cloth, and B. promised to pay to A. 10s. a week for the first two years, 11s. for the third, 12s. for the fourth, and 13s. for the fifth, the hours of working to be from six in the morning till seven in the

Milestone, his wife and children, were removed from the township of *Stokesley* to the township of *Ormesby*, both in the North Riding of *Yorkshire*, the sessions confirmed the order, subject to the opinion of this Court on the following case:—About *Candlemas* 1827, the pauper, being legally settled in *Ormesby*, took of one *Emerson* a cottage and some land, both in the parish of *Kirby*. Both the cottage and land were bargained for at the same time, and the rent agreed upon, namely, 11l. 10s., was for both conjointly, and each was to be held for the term of one year, but the times of entering upon and quitting the land and the cottage were different; the agreement being, that the land should be entered upon at *Lady-day* 1827, and the cottage at *May-day* 1827; the same to be held till *Lady-day* 1828 and *May-day* 1828 respectively. The pauper entered upon the land at *Lady-day*, and the cottage at *May-day*; he quitted the former on the ensuing *Lady-day*, having occupied the same for a year; and at *May-day* quitted the latter, having occupied that a year; paying the full rent of both cottage and land at two separate payments; namely, the first half-yearly rent after *Martinmas* 1827, and the second half-yearly rent about a week before *May-day* 1828. No evidence was offered by the appellants as to the value of the land alone, or of the house alone.—DENMAN C. J. This question depends on the statute 6 G. 4. c. 57.; which enacts “that no person shall acquire a settlement by reason of settling upon, renting, or paying parochial rates for any tenement, unless such tenement shall consist of a separate and distinct dwelling-house or building, or of land, or of both, *bonâ fide* rented by such person, at and for the sum of 10l. a year at the least, for the term of one whole year; nor unless such house or building, or land, shall be occupied under such yearly hiring, and the rent for the same, to the amount of 10l., actually paid for the term of one whole year at the least.” Now here the tenement did consist of separate and distinct building and land; they were *bonâ fide* rented for 10l. The question is, whether it was occupied for one whole year? the house and land were occupied under the yearly hiring, and each of them was for the term of one whole year. The words of the statute are therefore satisfied.—PARKE, TAUNTON, and PATTESON, Js., concurred.—Order of sessions quashed.

221. *Rex v. Ossett-cum-Gawthorpe*, M. T. 3. W. 4.—4 B. & Ad. 216.—On appeal against an order of two justices for the borough of *Leeds*, in the *West Riding* of the county of *York*, whereby *George Clark*, his wife and child, were removed from the township of *Leeds* to the township of *Ossett-cum-Gawthorpe*, in the said *Riding*, the court of quarter sessions confirmed the order, subject to the opinion of this Court on the following case. The pauper was born in *Ossett-cum-Gawthorpe*, and a hiring under the following agreement, and service for the time therein mentioned, in the respondent township, were admitted:—“Memorandum of an agreement made and concluded this 25th day of the fourth month, 1826, between J. and T. Walker of *Leeds*, cloth merchants, on the one part, and G. Clarke, with the consent of his father, on the other part; the said G. Clarke doth agree to become the hired servant of J. and T. Walker, for the term of five years, to do such work as belongeth to the finishing of cloth, and to take any part of work the said J. and T. Walker shall think proper, and do the same to the best of his knowledge justly and faithfully; this being done, the said J. and T. Walker promise to pay unto G. Clarke ten shillings per week for the first two years, and

eleven for the third, and twelve for the fourth year, and thirteen for the fifth and last year; the hours of working to be from six o'clock in the morning until seven o'clock in the evening, and to be paid for all over-time, and a deduction to be made for all short, either in sickness or in health." The question for the opinion of this Court was, whether *G. Clarke* gained a settlement in *Leeds* by such hiring and service.—DENMAN C. J. It is impossible to decide this case without interfering with some former decisions, but, upon the whole, I think that this was not an exceptive hiring. The pauper agreed to become the hired servant of *J. and T. Walker* for five years, to do such work as belonged to the finishing of cloth. If the agreement had stopped here, there would clearly have been a contract to serve for five years, and the masters would have the right to command all the services of the pauper during that period. The question is, if there be any clause in the subsequent part of the agreement which clearly takes away that right? The masters promise to pay the pauper weekly wages, varying in amount yearly during the whole five years. Then comes a clause in these words; "the hours of working to be from six o'clock in the morning until seven o'clock in the evening, and to be paid for all over-time, and a deduction to be made for all short, either in sickness or in health." There is nothing here to shew that it was in the option of the pauper to work or not for the master in over-hours; and if not, then the right given to the master in the early part of the agreement, to all the services of the pauper is not taken away. I think this was a complete bargain for all his time, and that there was not any part of that time during which the pauper could lawfully refuse to work for his master.—PARKE J. I am of the same opinion. I think there was no period of the day when the master could not lawfully command the services of the pauper. The true way to ascertain whether this be an exceptive contract or not, is, to consider what would have been the situation of the parties, if there had been an extraordinary demand for work, and the master had called on the pauper to work during over-hours. Could he have refused? The words of the contract are, "that *G. Clarke* agrees to be a hired servant for the term of five years, to do work," &c. That is the stipulation as to working, or to the service to be performed. Then the contract goes on to fix the weekly wages to be paid from year to year by the masters. Then come the words on which the difficulty arises;—"the hours of working to be from six o'clock in the morning until seven o'clock in the evening, and to be paid for all over-time." Those words seem to me to be a qualification of the sentence which immediately precedes them, and which fixes the amount of weekly wages; if that be so, then the case is like *Rex v. Byker* (a). It is distinguishable from *Rex v. Birmingham* (b), because, there, the pauper might, at his election, have worked or not for his master at over-hours. In *Rex v. Frome Selwood* (c), the limitation as to the working hours immediately followed the stipulation for service. Here, between that clause and the one specifying the number of hours the pauper was to work, the clause intervenes, fixing the amount of weekly wages. It appears to me that the pauper could not lawfully refuse to work for his master during the over-hours (if required so to do), but that the latter was entitled

evening, to be paid for all over-time, and a deduction to be made for a short: Held, by Denman C. J., Parke, and Patteson Js., Taunton dissentiente, that this was not an exceptive hiring, but a hiring for a years absolute

(a) 2 B. & C. 114.

(b) 9 B. & C. 926.

(c) 1 B. & Ad. 207.

to the whole services of the pauper during the five years, and consequently this was not an exceptive contract.—TAUNTON J. The cases undoubtedly run very near to each other. Certainty in sessions law is very important, and I am sorry therefore I cannot come to the same conclusion as my Lord Chief Justice and my brother *Parke*. This case appears to me not distinguishable from *Rex v. Birmingham* (a) and *Rex v. Frome Selwood*, and they being the latest cases on this subject, ought to govern this. It is said that in *Rex v. Birmingham*, the pauper was to do over-work only if he chose. Looking at the terms of the present contract, I think it was optional in the pauper here also to work over-hours or not. The hours of working are defined to be from six o'clock in the morning till seven in the evening. I cannot see why this limitation of the hours of working was introduced, unless it were as an exception in the contract. It is said that it refers only to the amount of wages: I think it refers to the time of working as well, and that the pauper might have refused to extend his time of service beyond those hours; and then it is not distinguishable from *Rex v. Birmingham*, nor can I distinguish it from *Rex v. Frome Selwood*. It does not signify much in what part of an instrument a particular stipulation occurs, unless it be so placed as necessarily to qualify only the words immediately preceding. Now I cannot consider this clause a mere regulation of wages, but I think it also limits the time of work. Without wishing to multiply distinctions in a branch of the law in which they are already too abundant, I must add that the present is the case of a servant hired to perform manufacturing work, and it is well known that exceptive contracts are extremely frequent on such occasions. This may in some degree furnish a key to the meaning of the parties, and assist in explaining their intention; and in affirming the order of sessions, I think we should not only fall in with the last two cases, but also with the general current of authorities.—PATTERSON J. I am of opinion that a settlement was gained. *Rex v. Byker* and *Rex v. Frome Selwood* turn on very nice distinctions. The question in this case is, whether the pauper was bound to serve more than the number of hours mentioned in the agreement? I thought, for a considerable time, that the case fell within *Rex v. Frome Selwood*; but, looking at the terms of the contract, and the place in which the stipulation as to the number of hours occurs, I think that it was introduced merely to regulate the wages; and that the pauper could not refuse to work for his master beyond those hours. I feel great difficulty in distinguishing one case from the other; but, upon the whole, it seems to me that the present falls within *Rex v. Byker*.—Order of sessions quashed.

Between the passing of 35 G. 3. c. 101. and that of 6 G. 4. c. 57., a settlement might be gained by reason of a party being charged with and paying his share towards the public taxes or levies

222. *Rex v. Penryn, M. T. 3 W. 4.*—4 B. & Ad. 224.—On appeal against an order of two justices, whereby *Honour Gill*, widow, and her three children, were removed from the parish of *Budock* to the borough of *Penryn*, both in *Cornwall*, the sessions confirmed the order, subject to the opinion of this Court on the following case:—In 1815 *Henry Gill*, the deceased husband of the pauper, took of *Mr. Edgcome* a tenement, consisting of three rooms, in the borough of *Penryn*, at the rent of 6*l.* a-year. These rooms originally formed part of a dwelling-house, which, before 1815, had been subdivided into five distinct dwelling-houses, of which the three rooms occupied by the pauper formed one. The other houses were occupied by

other tenants. It was agreed between *Gill* and the landlord that *Gill* should pay all the rates upon the whole property, the amount to be deducted from his rent. *Gill* was accordingly rated to, charged with, and paid the church, poor, and highway rates for the borough of *Penryn*, between 1815 and 1830, for the whole premises, in one entire sum or charge. The aggregate annual value of these premises amounted to 16*l.*, being the rent which the landlord received for the same, but the value of the tenement occupied by *Gill* was under 10*l.* a-year. In pursuance of the agreement with his landlord, *Gill*, when he settled his rent, was allowed the amount of the rates which he had from time to time paid. *Gill* was not answerable for the rent of any of the other tenants, nor had he any connection with or control over them.—DENMAN C. J. The statute 3 & 4 *W. & M.* c. 11. s. 6. enacts, “that if any person who shall come to inhabit in any parish shall be charged with and pay his share towards the public taxes or levies of the parish, then he shall be deemed to have a legal settlement in the same, though no such notice in writing be delivered, as is thereby before required.” It makes no distinction as to the value of the property in respect of which he is to be charged. It would be too much to say that the intention of the legislature was to give a settlement by rating in those cases only where notice was before required to be given to the parish officers. The judgments which have been relied upon, in *Rex v. Islington* (a), and *Rex v. Penryn* (b), were considered with due respect and attention, and overruled, in the case of *Rex v. St. Pancras* (c). The order of sessions must be confirmed.—PARKE J. I am of the same opinion. There is a time when a point, even of sessions-law, ought to be considered as settled.—TAUNTON and PATTESON, Js., concurred.—Order of sessions confirmed.

of the parish, in respect of a tenement above the value of 10*l.*

223. *Rex v. Threlkeld*, *M. T.* 3 *W.* 4.—4 *B. & Ad.* 229.—On appeal against an order of two justices, whereby *William Thompson* was removed from the township of *Keswick*, in the county of *Cumberland*, to the township of *Threlkeld* in the same county, the sessions confirmed the order of removal, subject to the opinion of this Court on the following case:—The pauper, a poor boy of, and then legally settled in, the township of *Threlkeld*, in the county of *Cumberland*, was, in *February* 1819, pursuant to an order of two justices of that county, bound apprentice by the churchwardens and overseers of the poor of *Threlkeld*, to *E. Foster* of, and residing within the township of *Keswick* in the same county, by indenture for a term therein mentioned. The township of *Keswick* is within the parish of *Crosthwaite*, and is about four miles distant from the township of *Threlkeld*, which is in the parish of *Greystoke*. Each township maintains its own poor separately, and both parishes are in the same county, and within the jurisdiction of the peace of the two justices who made the order for the binding, and who afterwards signed their allowance of the indenture. No notice was given to the overseers of the poor of *Keswick*, or to any of them, of the intention to bind out such apprentice, nor did any of the overseers of that township attend the justices who signed their allowance of the indenture, or either of them, and admit such notice, but the binding, as well as the service and residence under it, was in all other respects such as would confer a

Under the statute 56 G. 3. c. 139. s. 2. when an apprentice is bound from one parish into another, notice must be given to the overseers of the latter, though both be in the same county and jurisdiction of the peace.

(a) 1 *East*, 283.

(b) 5 *M. & S.* 443.

(c) 2 *B. & C.* 122.

settlement upon the pauper in *Keswick*. The question for the opinion of this Court, was, whether such notice was necessary under the circumstances above stated.—DENMAN C. J. The pauper gained a settlement in *Keswick*, unless he was prevented from so doing by the 56 G. 3. c. 139. s. 5., which enacts, “that no settlement shall be gained by any child who shall “be bound by the officers of any parish, &c. by reason “of such apprenticeship, unless *such order* shall be made, and *such allowances* of such indenture of apprenticeship shall be signed *as hereinbefore directed*.” It is said here that there have not been such an order, and such allowances of the indenture signed as by the act directed, and I am of that opinion. The act of parliament contains a proviso (s. 2.) that “notice shall be given to the overseers of the poor of the “parish or place in which such child shall be intended to serve an “apprenticeship, before any justice of the peace for the county or “district within which such parish or place shall be, shall allow such “indenture, and such notice shall be proved before such justice shall “sign such indenture, unless one of such overseers shall attend such “justice and admit such notice.” Now here the sessions have found that no notice was given to the overseers of *Keswick*, nor did the overseers of that parish attend before the justices and admit such notice. But it is contended that notice is not necessary in a case where the binding parish, and that in which the apprentice is to be bound, are within the *same* county, and consequently within the jurisdiction of the same magistrates. But the object of the legislature being, as may be collected from the preamble, that every possible precaution should be taken in the binding out of the poor apprentice, it is manifest that the same necessity for notice may exist in either case. It seems to me absurd to say that merely passing the boundary of the county should render that necessary in one case which was not so in another. The provision that “no settlement shall be “gained unless such order shall be made,” &c. is for the advantage of the apprentice, because it then becomes the interest of the officers of the binding parish to take care that the apprentice shall be well bound. With all deference to the opinion of Lord *Tenterden* in *Rex v. Newark-upon-Trent* (a), and admitting that the different clauses of this act of parliament are not easily reconcileable with each other, I think that the proviso as to notice in the second section is not confined to cases where the two parishes are situate in different counties, but that it extends to all the cases mentioned in the first section as well as the second. There are no words to controul or limit that construction; it is beneficial to the apprentice, and by adopting it we do not violate the grammatical sense of the language used by the legislature.—PARKE J. I am of the same opinion. The doctrine that an act of parliament is to be construed so as to favour settlements, has been long and justly exploded. There is no rule of law which calls on us to put a strict construction on this act of parliament. We must endeavour, therefore, to discover the intention of the legislature and carry it into effect, if the language used will warrant us in so doing; and the question is, whether, putting a proper grammatical construction on the proviso, it is confined to cases where the two parishes are situate in different counties, and consequently within the jurisdiction of different magistrates, or extends to those

(a) 3 B. & C. 59.

where the parishes are in the same county and jurisdiction. The circumstance of its being printed as part of the second section can make no difference in the construction, because, on the parliament rolls, the acts are not divided into sections. Now, the terms of the proviso are, "and notice shall be given to the overseers of the poor of the parish in which such child shall be intended to serve an apprenticeship, before any justice of the peace for the county or district within which such parish shall be, shall allow such indenture, and such notice shall be proved before such justice shall sign such indenture." The language would be more accurate if it had been said "before he shall allow, and before he shall make the order for the binding;" but the word *allow* is used in the statute as common to both. The language, therefore, of the proviso is sufficiently large to include cases where the parishes are in the same, as well as where they are in different counties, and the sense and reason of the thing seem to require, also, that it should extend to each class of cases. I thought also reason required that the first part of the proviso should be general, but as a different opinion was expressed by some of the judges on that point in *Rex v. Newark-upon-Trent* (a), I do not wish to give any decisive opinion upon it; if, however, the first part of the proviso extends to all cases, the second undoubtedly does, and if the first does not so apply, no reason can be given why the second should not. Upon the whole, I think that the opinion delivered by *Holroyd J.*, in *Rex v. Newark-upon-Trent*, is perfectly correct, that notice was necessary to be given in this case, and that, for want of such notice, no settlement was gained in *Keswick*.—TAUNTON J. I frankly acknowledge there are some expressions in the second section which I do not perfectly understand, but they are not material to the question before the Court. I see enough to convince me that the order of sessions is right. That part of section 2. which begins with the words "and notice shall be given," is a general enactment, applicable to all the cases embraced in the first section. As to the part which begins with, "provided always that no indenture shall be allowed," &c. I am by no means satisfied that those are not words of general enactment; but, however that may be, the words respecting notice are undoubtedly general; and the sense and reason of the thing require that they should be so. There may be as much reason for requiring notice in a case where the two parishes are in the same county, as where they are in different counties. Two parishes in the same county may be at a great distance from each other, and two parishes in different counties may be adjoining each other; and it is manifest that notice may be as necessary in the one case as the other. Where, indeed, the two parishes are in different counties, notice need not be given to the overseers of the master's parish until the parties go before the magistrates having jurisdiction over that parish: but where the two parishes are in the same county, the notice must be given before the indenture be allowed. The order of sessions must be confirmed.—PATTESON J. I am of the same opinion. I think that, by sect. 2., notice is required to be given to the overseers in all cases. The early part of sect. 2. requires that the indenture shall be allowed by the magistrates having jurisdiction over the place *from* which the apprentice is to be bound, as well as by the magistrates of the place *into* which the apprentice is to be

(a) 3 B. & C. 71. 84.

bound. If the parishes are within different jurisdictions, two sets of justices are required; if within the same, only one: but in the latter case, they are magistrates for each parish. Where there are to be two allowances, notice need not be given to the overseers of the master's parish till the parties go to the second set of justices, because they are the persons who are to make the order; but where there is only one set of justices, notice must be given to the overseers of the master's parish before the indenture be allowed by the justices making the order. I am, therefore, of opinion that the order of sessions was right. Order of sessions confirmed.

By the statute 17 G. 2. c. 38., it is discretionary in magistrates to commit an outgoing churchwarden or overseer who neglects or refuses to account.

224. *Rex v. Justices of Norfolk*, M. T. 3 W. 4.—4 B. & Ad. 238.—The appeal against the accounts of the overseers of the poor of the parish of *Brancaster*, having been heard at the *January* sessions 1831, was dismissed (a). An information was afterwards laid against *L. Sims*, who had been one of the churchwardens, for not having rendered an account pursuant to the 17 G. 2. c. 38. A summons having been granted against him, he appeared by attorney, and it was proved that he was eighty years of age, very infirm, and although he had been elected churchwarden, he had never been sworn in, and that, although he signed the poor rates, he had never interfered in their collection or received any of the parish monies. The justices, under these circumstances, having refused to commit him, a rule was obtained calling upon the justices and *Sims* to shew cause why a mandamus should not be directed to the justices to issue their warrant of commitment pursuant to the statute.—DENMAN C. J. The justices were satisfied that, under the circumstances of this case, there was no ground for commitment; and the statute *authorizes*, but does not *compel*, them to commit. There is no ground, therefore, for issuing a mandamus to the magistrates; and the rule, as to them, must be discharged with costs, but, as to *Sims*, without costs.—PARKE J. *Sims* ought to have rendered some account. The magistrates, however, having exercised their discretion and refused to commit him, I think the rule should be discharged, as to them, with costs, and without costs as to *Sims*.—TAUNTON J. concurred.—PATTESON J. I am of the same opinion. *Sims* ought certainly to have delivered some account; because the statute requires that he shall render an account of the monies rated and assessed and not received, and of all other things concerning his office.—Rule discharged.

(a) 2 B. & Ad. 944.

THE END.



